PROPOSED FOREST SERVICE CONSERVATION EASEMENT PURCHASE FROM THE STATE OF NEW HAMPSHIRE

HEARING

BEFORE THE

SUBCOMMITTEE ON FORESTS, FAMILY FARMS, AND ENERGY

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

JUNE 1, 1989

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PROPOSED FOREST SERVICE CONSERVATION EASEMENT PURCHASE FROM THE STATE OF NEW HAMPSHIRE

THURSDAY, JUNE 1, 1989

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FORESTS, FAMILY FARMS, AND ENERGY,
COMMITTEE ON AGRICULTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 1302, Longworth House Office Building, Hon. Harold L. Volkmer (chairman of the subcommittee) presiding.

Present: Representatives Olin, Stallings, Johnson, Morrison, Smith, and Schuette.

Staff present: Joseph Muldoon, assistant counsel; Alice Devine, minority associate counsel; Glenda L. Temple, clerk; Timothy P. De Coster, James R. Lyons, and Allison Biggs.

OPENING STATEMENT OF HON. HAROLD L. VOLKMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. VOLKMER. The subcommittee will come to order.

The Subcommittee on Forests, Family Farms, and Energy is meeting this morning to review the proposed acquisition by the Forest Service of a conservation easement on certain forest lands in the State of New Hampshire.

The forest lands, generally known as the Nash Stream Area, were made available for purchase by the Diamond International Corporation. Efforts were undertaken by interested groups and individuals to take advantage of the opportunity to conserve these particular lands, located in the immediate vicinity of the White Mountain National Forest.

The Secretary of Agriculture was authorized in an Appropriations Act to acquire these lands and interests therein. The Department of Agriculture's Forest Service subsequently acquired fee title to about 4,500 acres of these lands, and is now proposing to acquire a conservation easement for another 39,500 acres from the State of New Hampshire, at a cost of $3.95 million.

In conducting this hearing, the subcommittee wants to review the merits of this particular proposal. In addition, we must consider the policy implications of this type of acquisition, given that large tracts of similar lands are expected to become available for acquisition in the Northeast within the next few years.

I want to thank all of our witnesses for coming here today. Unfortunately, we have come under severe time constraints, and we

will need to adjourn by 11:45 to attend the ceremony honoring our distinguished late colleague, Senator Claude Pepper. Therefore, it will be necessary for everyone to be as brief and concise as possible in their comments, and we may need to transmit additional questions to witnesses following the hearing.

Thank you. I also have some background material to place in the record.

[The material follows:]

United States Department of Agriculture | Forest Service | Washington Office | 12th & Independence SW
P.O. Box 96090
Washington, DC 20090-6090
(703) 235-8212

Reply To: 5420

Date:

Honorable Harold L. Volkmer
Chairman, Subcommittee on Forests,
Family Farms, and Energy
Committee on Agriculture
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The New Hampshire Forest Management Initiatives Act of 1988 authorizes and directs the Secretary of Agriculture to acquire certain lands and interests therein now or formerly owned by Diamond International Corporation in the State of New Hampshire. The Act also specifies that the Secretary cooperate and assist the State and private organizations in acquiring these lands. The FY 1989 Appropriations provided $5.25 million to the Forest Service for this initiative.

The Forest Service has acquired fee title to about 4,500 acres of these lands within and adjacent to the boundary of the White Mountain National Forest at a cost of $1.175 million.

We are now in the process of acquiring a conservation easement from the State on the remaining 39,500-acre Nash Stream parcel at an expectant cost of $3.95 million. The State and the Forest Service have agreed on the terms of the easement. The next step is to complete the appraisal and title work which is expected to take 60-120 days. Because of your interest in the project, we are enclosing a copy of the easement.

Sincerely,

F. Dale Robertson

F. DALE ROBERTSON
Chief

Enclosure - easement

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CHIEF MINORITY COUNSEL

November 22, 1988

The Honorable Richard E. Lyng
Secretary
Department of Agriculture
12th St. and Jefferson Drive SW
Washington, D.C. 20250

Dear Secretary Lyng:

We are opposed to a proposal by the State of New Hampshire to require the Forest Service to give the State $4 million of federal funds that Congress had appropriated to be used to acquire new national forest lands. Under the State's proposal, endorsed by the Department of Agriculture, the Forest Service would not receive a single acre of land in exchange for giving New Hampshire these funds. The events leading to this poor use of our appropriation are as follows.

During the past year, large blocks of private forest lands throughout New England were placed on the market for sale. The resulting sales have involved hundreds of thousands of acres and have threatened to end the traditional recreational access New Englanders have had to these forests for generations. As part of our effort to protect this access and maintain the outdoor lifestyle of New England, Congress appropriated for the Forest Service in Fiscal Year 1989, $5.25 million to acquire forest lands in New Hampshire threatened by development.

Those of us who supported this appropriation intended that the Forest Service purchase approximately 4,000 acres of inholdings within the White Mountain National Forest and as much of the adjacent 45,000 acre Nash Stream tract as possible. The agency now has purchased the inholdings for approximately $1 million but has yet to acquire any Nash Stream lands with the remaining $4 million. This beautiful drainage with its valuable natural resources was put on the market by Diamond International Corporation and then purchased by Rancourt Associates, a development firm. To prevent development that seemed imminent, the State of New Hampshire purchased the tract. The State, however, only had enough funds to buy part of Nash Stream and had to borrow from the Nature Conservancy and the Society for the

Protection of New Hampshire Forests to purchase the rest. The State now must pay off this debt, but is unwilling to use state funds and/or to give up a single acre of land.

National forest designation would provide the best possible management for the Nash Stream drainage. It is immediately adjacent to the White Mountain National Forest and, therefore, is a logical addition to it. Because the Forest Service already has a presence in the area, it is far more efficient to use its existing personnel, organization and expertise to manage the drainage than to create a new organizational structure that is untried and inexperienced. The mission of national forests and all the laws governing their management would ensure that Nash Stream would receive the kind of multiple use management that the public has indicated it wants for the area. As a result, there is widespread public support in New Hampshire to expand the White Mountain National Forest to include Nash Stream. Furthermore, the laws requiring full public involvement in national forest decision making would guarantee that New Hampshire citizens would continue to have a voice in Nash Stream's management.

The State's proposal for the Forest Service's appropriation would prevent any of the Nash Stream drainage from becoming national forest. It requires the agency to give New Hampshire all of its remaining $4 million appropriation in exchange for a useless "conservation easement". The easement's alleged purpose is to restrict certain types of uses and development in Nash Stream. However, the State, which would continue to own and manage the land, already is committed publicly to these very types of restrictions. Prevention of development and conservation of resources were the reasons the State bought the land in the first place. For the federal government now to spend millions of dollars for a "conservation easement" on state lands that pose no threat is unprecedented, redundant and wasteful.

The State is attempting to take dollars from the national taxpayer without giving that taxpayer anything of substance or value in return. It plans to use these federal funds to pay off its debt so it can establish some sort of state forest. This scheme was developed behind closed doors without consulting any of the Members of the House of Representatives who had supported the appropriation. It is simply a grant to the State in disguise.

We urge you to abandon this flawed proposal and direct the Forest Service to spend its appropriation in the only way that truly conserves the land and gives American taxpayers their money's worth. You should direct the Forest Service to purchase as much of the Nash Stream tract as its money will buy. The State does not have the financing to keep all these lands and the

Appropriations bill directs you to use condemnation authority to acquire them, if necessary. The Forest Service and New Hampshire can coordinate the management of their respective lands in Nash Stream under a joint management plan.

Our proposal for the expenditure of this appropriation is consistent with Congress' original objectives for these funds. It will result in new national forest lands for New Hampshire and the nation. It will give these lands quality multiple use management with full public involvement in present and future decisions and, equally as important, it will treat American taxpayers fairly. This is their money and they deserve to get a fair return on their investment.

Sincerely,

Bruce F. Vento
Chairman, Subcommittee
on National Parks
Public Lands, Committee
on Interior and Insular
Affairs

Harold L. Volkmer
Subcommittee on
Forests, Family
Farms and Energy,
Committee on Agriculture

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

December 13, 1988

The Honorable Harold L. Volkmer
Chairman, Subcommittee on Forests, Family
Farms and Energy
Committee on Agriculture
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman: Harold

Thank you for your letter of November 22, 1988 concerning the acquisition of the Nash Stream tract in New Hampshire. We welcome the opportunity to explain our policy decisions and the manner in which we are fulfilling the mandate of Public Law 100-466, the New Hampshire Forest Initiatives Act of 1988 (referred to as the "Act").

As noted in your letter, $5.25 million was appropriated for the acquisition of New Hampshire lands pursuant to the Act. At this time, the Forest Service has acquired approximately 4,500 acres in fee title within and adjacent to the existing boundaries of the White Mountain National Forest. The cost of that initial acquisition was $1,175,000. The State of New Hampshire has acquired fee title to the approximately 38,500 acres of the Nash Stream tract, and we are currently negotiating with the State for the acquisition of a conservation easement over that tract. By that easement, the Federal Government will acquire interests in land, including development rights, at least equal to the $3.95 million which we will pay the State. While final resolution of the administration and management issues will await a study to be prepared in accordance with section 4 of the Act, the current intent is to allow the Nash Stream to be managed by the State for public use as a state forest or similar designation.

The facts surrounding enactment of the Act and the appropriation are well known. The efforts by The Nature Conservancy, the Society for the Protection of New Hampshire Forests, and the State of New Hampshire to purchase the Nash Stream tract and adjacent landholdings of Diamond International Corporation were in danger of being preempted by Rancourt Associates. There was concern that Rancourt would develop the property in a manner inconsistent with the traditional uses of the forest for timber management and public recreation. At the request of Senator Rudman, this Department provided options for federal action to assure that the Diamond lands continued to be managed for traditional multiple uses, including timber harvesting and public recreation.

The original legislative proposal was enacted by the Senate in July. Entitled the "White Mountain National Forest Boundary Modification Act of 1988" (Cong. Rec. July 13, 1988, S. 9459), the proposal would have expanded the National Forest boundary to include the entire Nash Stream parcel. It would also have required the Secretary of Agriculture to condemn the lands and incorporate them into the National Forest System.

Subsequently, the House-Senate Conference Committee significantly modified the earlier Senate version particularly with regard to the role of the Federal Government, and those modifications were enacted into law. The final enactment was entitled the "New England Forest Management Initiatives Act of 1988" and differed from the earlier Senate proposal in several ways. For example, in the final version of the Act, the primary federal role is to facilitate and cooperate with the State and private entities in the acquisition of the Diamond lands. Additionally, unlike the earlier Senate proposal, the Act expressly provides for the acquisition of partial interests. Significantly, the expansion of the National Forest boundary was deleted and a final decision on future management was deferred pending a study.

We believe that the federal acquisition of fee title to the inholdings and a conservation easement on the Nash Stream parcel is in accord with the spirit and intent of the Act. Neither the Act nor its limited legislative history indicate a preference for spending the appropriated sums entirely on fee acquisition of lands to be incorporated within new segments of the National Forests. If that were the legislative intent, the original Senate language expanding the National Forest boundaries would have been retained, and sufficient funds to acquire fee title would have been appropriated.

With respect to the Nash Stream parcel, we believe the approach that we are taking best serves the public interest from the various perspectives of the people of New Hampshire and the federal taxpayer. State and Departmental officials agreed that the most important objective in this endeavor was to assure that the Nash Stream parcel is permanently protected for public use consistent with traditional multiple uses of the forest lands in New England. Our approach is meeting that objective as well as other objectives of this Administration. Namely, the Federal Government is taking on the role of a facilitator of state initiatives for the protection and management of public lands, and we are accomplishing that by minimizing federal expenditures.

You asked a valid and important question as to whether the federal taxpayers are getting their money's worth by the Federal Government buying an easement over state lands. We believe the federal taxpayers' interests are being well served. The federal contribution is less than half the cost of the entire acquisition but, because of it and the initiative of the State of New Hampshire, thousands of acres of forest lands will be managed for public use and enjoyment. While an easement is not always the most effective way to achieve resource protection objectives, it is the best approach in this situation. The easement acquired by the Federal Government over Nash Stream is our guarantee that the congressionally mandated purposes of the Act will be

achieved under state land management. With the current federal deficit, the approach we are taking is the most responsible and cost effective.

As you are aware, Nash Stream is but the first of many New England corporate land holdings which may be for sale in the near future. Concurrently with the passage of the Act, Congress appropriated funds to study the public interests in these corporate lands. The Forest Service is actively pursuing this study in order to meet the one year completion date prescribed by the appropriation. We are pleased at the intense interest and cooperation we are getting in that study process from the states, landowners, and the general public.

We do not suggest that what we do at Nash Stream will be the precursor to the federal response to the New England lands study. Be assured that all options will be considered for possible federal, state and local responses to the corporate land situation. The easement we are acquiring on state owned land at Nash Stream represents one of many possible approaches.

Future acquisition and management of forest lands in New England will be based on resource needs and objectives, and the administrative and financial capabilities of the federal, state and local governments. We sincerely believe that future acquisitions of public use lands in New England will have to be based on cooperation between the various levels of government, and we have to be willing to take innovative approaches to achieve the important public purposes. While we know you disagree with our approach on the Nash Stream acquisition, we hope you appreciate that we have proceeded with this intent and spirit.

We are responding to Chairman Bruce F. Vento with this same letter. If we can answer any further questions, please let us know.

Sincerely,

PETER C. MYERS
Acting Secretary

Mr. VOLKMER. With that, I will yield. Does the gentleman from Oregon or the gentleman from South Dakota have a statement?

I have a statement by the gentleman from Washington. That will be inserted at this point in the record.

[The statement of Mr. Morrison follows:]

STATEMENT OF
THE HONORABLE SID MORRISON
BEFORE THE SUBCOMMITTEE ON FORESTS, FAMILY FARMS AND ENERGY
CONCERNING THE PROPOSED FOREST SERVICE
PURCHASE OF A CONSERVATION EASEMENT FROM
THE STATE OF NEW HAMPSHIRE

JUNE 1, 1989

Mr. Chairman, I would like to take this opportunity to thank you for holding this hearing on the purchase of a conservation easement near New Hampshire's White Mountain National Forest by the Forest Service.

As everyone here is aware, Congress appropriated funds to the Forest Service to acquire forest lands in New Hampshire threatened by development in order to preserve natural resources and traditional outdoor access. The Forests, Family Farms and Energy Subcommittee has oversight authority to review the merits of this proposal. I look forward to learning the details of this particular purchase and welcome the insight it will provide in considering future acquisitions in the Northeast, as well as the rest of the nation.

I see from the list of witnesses that we will be hearing from a variety of interested and knowledgeable people, I look forward to their testimony.

Thank you, Mr. Chairman.

Mr. VOLKMER. With that, we will begin with our first witness, who is our colleague, very distinguished in the area of our national parks and forest lands, the Honorable Bruce Vento, from Minnesota.

STATEMENT OF HON. BRUCE F. VENTO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. VENTO. Thank you, Mr. Chairman. It is a pleasure to be here. I count it a blessing to have the opportunity to work with you on so many important forest lands questions and this is one that I think is very important.

Mr. Chairman, you have asked that my statement be placed in the record, and I think that is appropriate. I have noticed your concern about finishing on time. We all want to attend the ceremony for our late colleague, Claude Pepper. So let me just summarize what my concerns are. You can read my statement and it will be a part of the record.

I come to this hearing very frustrated because many of us had had concerns about the sale of large blocks of forest lands in New England by the private sector, and the likelihood that much of the key areas that traditionally had been used—even though privately owned, for recreation, for hunting, and for many of the other activities that define the type of life that New Englanders have may be closed off to these traditional uses. The quality of life that they had in terms of outdoor experiences, wood production, tourism, and other resource industries that are located there might be lost.

The concern was that as that land is sold that many of the key parcels, such as waterfronts would become fenced off and closed to the general public. For this reason, I and others felt that we ought to move very quickly and expand the national forest lands under the Weeks Act, by direct purchase, much as we have expanded beneficially the national forests in the East in the past.

For this purpose, there was language added last year to the appropriations bill that provided dollars for study of New England forest lands as a result of the support of Congressman Pat Leahy, the Chairman of the Senate Agriculture Committee, and members of the New England delegation such as Congressman Brennan, Olympia Snowe, and, of course, Senator Rudman. The study is now going forward. Senator Rudman sought direct dollars for the Nash Stream tract and we supported this appropriation with the understanding that it would be used to add these lands to the White Mountain National Forest.

We on the authorizing committees acted in good faith to try to work with the Appropriations Committee, while retaining the authority and responsibility that we have as an authorizing committees. To have the House authorizing committees' concerns used to justify not purchasing the Nash Stream Tract, but acquiring a conservation easement instead is really outrageous as far as I am concerned. I know there are many that share this particular view. This action to prevent these dollars from being spent on fee simple purchase of as much of that land as possible to expand the national forest lands in New Hampshire is simply unacceptable, Mr. Chairman. And I can tell you right now that if this is going to be the

attitude that we are not going to see any public dollars flowing into the New England forests.

We did not intend this to be a special grant to the State. There isn't a State in this Nation that wouldn't want and doesn't need more land and water conservation funds. In fact, we have a major proposal before my subcommittee and before the Congress, authored by Congressman Udall, which we are debating at this time, to deal with that issue by giving States the opportunity to buy key lands. So I don't doubt that there is a need in New Hampshire, but the fact of the matter is we didn't intend this to be a special grant to the State in this particular instance.

This conservation easement purchase is unprecedented and unacceptable. It is not in accord with the intention of the appropriations language or with this Member of Congress and others that participated in putting that money into the program to help the State of New Hampshire. It is inconceivable to me that we would march down the road in good faith and provide this money and then have this thrown back in our face in this particular manner.

Now that is not to say that there aren't instances where conservation easements are appropriate or necessary. But I am just suggesting to you that in this particular instance it wasn't intended for that purpose. The history of conservation easements, which is articulated more precisely in the statement that I have given to you, outlines that they are an expensive maintenance item. They do require administrative work. We have some experience with them, and there is probably a good deal more work that we ought to do to define precisely what the costs are to manage such easements.

But we have had a general policy against using Federal funds to buy State lands or interests in State lands. If we are going to change this public policy, then I think we need to have this change debated. It should be deliberated on and decided by the committees of Congress, specifically your committee and mine. That is the way that we have to go.

It is possible at this point to arrive at a compromise. I suggest joint management with the Federal Government purchasing whatever the $4 million remaining would be able to purchase of Nash Stream, and then agree with the State on a joint management plan. We would own fee simple ownership of a certain portion of Nash Stream and could expand that holding later.

This is a situation where we should be expanding the national forests which I think would be very beneficial to the State of New Hampshire as well as beneficial for the people of the Nation. We need to make a stand to make certain that the taxpayers receive a dollar's worth of value for a dollar expended. The fact of the matter is that this conservation easement isn't buying anything. The State is already committed to preserving these particular lands. Furthermore, the State is defining what the value of the development rights are, and what we are going to pay for that. If you check the legal history of conservation easements, you discover that they are difficult to enforce

So there are a lot of concerns and problems with easements. We don't need to buy all those problems and concerns. I don't think

that anyone else needs to buy them. I think the Forest Service ought to have a clear mandate here in terms of fee ownership.

I am appalled that we went forth in good faith, put up this money for fee title, only to have this come back as a conservation easement. I think it is a bad faith deal. I am very disappointed with it and concerned about it, and I can tell you right now that it is going to cast a long shadow over any programs for New England forests in the future. I think they are buying into an argument and creating a debate that is not necessary. But I can tell you that I am ready to engage in it, if that is what they want.

[The prepared statement of Mr. Vento appears at the conclusion of the hearing.]

Mr. VOLKMER. Thank you very much. I believe your position is quite clear to everyone.

Basically, what you are saying is that what this amounts to, the way it is being promoted now by the Department of Agriculture and the Forest Service, is really it is just a grant, these $3.5 million, to the State of New Hampshire is really what it amounts to?

Mr. VENTO. That is right. I think that it is clear that that is what it turns out to be, a special grant of money. In other words, if that is what they want, let us put it in the bill in that way. That is the way it should have been written. But it wasn't. That isn't the language or what was intended.

Mr. VOLKMER. Perhaps in the future, if something like this comes up again, that we make sure that it clearly states in the Act that the land has to be acquired by fee title and fee title only. That is the only interest that can be acquired.

Mr. VENTO. I haven't quite given up on stopping this yet, Mr. Chairman.

Mr. VOLKMER. Well, I am glad to hear that.

I have no further questions. The gentleman from Washington.

Mr. MORRISON. No questions. We respect, Bruce, your work on Interior very much. Both fear and respect your work.

Mr. VENTO. Well, we can't do it without your help and the help of a lot of members in this committee.

Mr. VOLKMER. The gentleman from Virginia.

Mr. OLIN. Thank you, Mr. Chairman.

I want to also say to Bruce, who is a good friend of mine and we have worked together on a number of projects, that I apologize for not being here to hear your testimony, although I must say I got the gist of it without any difficulty at the end. I will look at the whole thing. We, certainly, in this committee value your insight in these problems, and I will give very close consideration to what you had to say.

Mr. VENTO. It is an important issue in terms of the future of the Forest Service, Jim.

Mr. OLIN. Fine. Thank you very much.

Mr. VOLKMER. The gentleman from Oregon?

Mr. SMITH. Mr. Chairman, as I read the New Hampshire testimony, they are using this as seed money rather than buying it fee simple. Are we going to follow through with the means necessary to purchase the whole piece of land necessary for protection?

Mr. VENTO. Not necessarily. The point is that the type of ownership that they are proposing here is a difficult one administrative-

ly, Bob. I don't fault the State of New Hampshire for attempting to protect this land. I think that is what they ought to do. I think Governor Sununu and the new Governor and our former colleague, Governor Judd, had the right intentions. They are good conservationists. I think that they understood what was necessary to do. There is a great symbiotic relationship that can occur here. However, they are also giving us a real administrative headache and some real cause for problems in the future by virtue of this sort of unique type of purchase.

I might say that the language in the appropriations bill is exactly like the language that we have for other purchases of land. Although it wasn't the same as what Senator Rudman put it in. The language was modified to reflect the concerns of the authorizing committees. At no time or in any shape or form did we intend that to be a conservation easement. Of course, there were some inholdings that were bought in fee simple, about $1.2–$1.3 million worth. The remainder of the dollars are being used to pay for a conservation easement which isn't necessary. We are buying nothing with them. The taxpayers are not getting value for the dollar.

The same purpose would be accomplished by the purchase of as much land as we could purchase, and the State then receiving the dollars for that and then turning around and using it in whatever way is appropriate. It is my understanding that they didn't initially—maybe they do now—have the financing to purchase the whole Nash Stream tract and had to work with conservation groups such as the Nature Conservancy to achieve the financing to purchase the lands. You will probably hear more about that later.

The end result is that they are giving us a real problem here. It is ironic to me, as I think Bob and others know, that States often have revered the work of the Forest Service and have invited them into their States to expand their role. We have a Forest Service presence in New Hampshire. Administratively, there would be no difficulty in expanding the White Mountain National Forest. The Forest Service is already there.

For the State of New Hampshire, though, this would be a new venture for them where they do not already have a presence.

You will probably explore some of those questions further in this hearing. Thank you.

Mr. VOLKMER. Bruce, if we can we will make it short. Here I am reading from the answer—and I appreciate it being a little short—from the Forest Service. It says here in this statement: "The United States would acquire the commercial development and subdivision rights and unreserved subsurface rights."

Mr. VENTO. That is right.

Mr. VOLKMER. Let me ask you this. That you know of, what does the Forest Service do with commercial development rights, subdivision rights and unreserved subsurface rights? Do we go into mining or what?

Mr. VENTO. Well, I think that they could. They could provide for mining activities. There could be claims and this could cause all sorts of problems in terms of the surface estate then. I think you point out one of the big problems and that is how does the Forest Service administer something when it owns the subsurface and not the surface estate.

Mr. VOLKMER. Right.

Mr. VENTO. And furthermore, the Forest Service doesn't have much to do anything with development rights. These are something that have been defined by the counties or by the State. The State is defining what the value of this is. If they say you can put Taj Mahal on it, that makes it worth that much more, doesn't it? What development rights does the Forest Service really get?

Mr. VOLKMER. There is none that I know of.

Mr. VENTO. Right. It is defined by the State and it is going to be enforced by State courts. It is not going to be enforced by the U.S. Supreme Court. This isn't a Federal jurisdiction issue, my friends. I think this is the sort of problem that you buy when you start looking at conservation easements.

There are some areas that are appropriate for easements. The Forest Service has used them with Wild and Scenic. The Park Service has used them in a variety of different ways. And I can tell you, where we have used them there are problems.

In the St. Croix, adjacent to my State between Minnesota and Wisconsin, the Federal Government spends $40,000 a year trying to enforce conservation easements, and I can tell you that the program is a sham. It is bad news and it doesn't do the job. We also are spending all kinds of money on the easements along the Blue Ridge Parkway.

Incidentally, the only mineral of any value right now in the Nash Stream tract is excluded from the conservation easement; this is the gravel which is recognized as being profitable to extract. That is excluded from the easement's protections. So the one thing that has any value is excluded.

This just points out the folly of what is being done here. I hope that working together we can change this proposal and get back on the course where we were before with commonality of goals, instead of this proposal which rips off the national government. Every State could make the claim that they want more money for land and water conservation funds and we have proposals before Congress to do that. Let's move on then to give the States the ability to receive these funds. But this easement proposal is just too hokey and I hope we can avoid it. It is a sham.

Mr. VOLKMER. Thank you very much. No further questions? I appreciate your testimony today, Bruce.

Mr. VENTO. Thank you, Mr. Chairman. Thank you, members.

Mr. VOLKMER. Our next witness will be Mr. Gordon Small, Director of Lands, Forest Service, U.S. Department of Agriculture.

Mr. Small, your statement will be made a part of the record. You may review it in full or summarize, however you so desire, since your statement is fairly short.

STATEMENT OF GORDON H. SMALL, DIRECTOR OF LANDS, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY JIM SNOW, OFFICE OF GENERAL COUNSEL

Mr. SMALL. Thank you, Mr. Chairman. Before I begin, I would like to introduce Jim Snow. He is from the Office of General Counsel in the Department of Agriculture, in case somebody has any questions about legal implications.

You have pretty well summarized the situation here, and I want to thank you for the opportunity to discuss this issue and the easement purchase on the 39,500 acre Nash Stream property.

I would like to point out that the Act did encourage a cooperative acquisition effort between the Forest Service, Secretary of Agriculture, the State of New Hampshire and the conservation organizations in acquiring about 46,000 acres of lands or interest in lands. The total acquisition cost is about $12.7 million and the Federal share was about $5.25 million or about two-fifths of the total. The remaining funds were a combination of State money and loans from conservation organizations.

We are going to focus in this discussion primarily on the acquisition of that conservation easement. Basically, as you have mentioned, the State would retain rights to timber and nondeveloped recreation, and the United States would acquire the commercial development and subdivision rights and unreserved surface rights. We have appraised those rights at $3.95 million or slightly in excess of that. We are awaiting the title clearance to close on the transaction.

As you have heard, a number of issues have been raised in relation to the proposal. One concerns whether the Federal Government should acquire easement rights on lands owned in fee by a State. Easements are just one of the many tools and, in our opinion, the Nash Stream situation lends itself to the use of easements as an effective mechanism to achieve the purposes of this specific act.

In considering this, we looked to the act, and we believe the easement proposal is cost effective. We believe it is legally enforceable and faithful to the spirit and intent of Congress.

It has been suggested that Nash Stream should be partitioned and incorporated into the White Mountain National Forest. Again, if we look at the legislative history, the conference did not adopt the original Senate language, which would have expanded the boundaries of the White Mountain National Forest to include the property. In fact, the Act encourages the Forest Service to assist initiatives by the State and private organizations. So we have a situation where the direction really was not to incorporate it into the national forest at this time. The State put up the bulk of the money, and we were encouraged by the act to cooperate with the State and the conservation organizations.

Some would prefer that the United States purchase a greater interest in Nash Stream including fee title. However, money was a limitation. Congress appropriated only 40 percent of the total amount. In our view, the easement is commensurate with available funds and is the most cost effective way of assuring that the intent of the act is covered over as much of the land as possible. In other words, we can ensure that the intention of Congress that management guidelines would apply to the entire property.

Some comments have addressed the management guidelines included in the easement, particularly the timber management direction. We believe this direction is consistent with the language in the act. The first sentence of the act states that it is for the protection and management of the timber resources and the scenic natural and recreation values. Another section elaborates that the pri-

mary management emphasis shall be the sustained yield of forest products consistent with traditional uses. In accord with this congressional intent, the easement allows timbering subject to appropriate environmental constraints.

We have heard some discussion already about whether the United States is getting its money worth on spending $3.95 million for an easement. This property was appraised—these property rights were appraised, as required by law, and our appraisal indicates that the lands and interests acquired under the easement are worth at least $3.95 million.

From a policy perspective, we have maximized the utility of the monies appropriated. For its contribution of 40 percent to the overall cost of the acquisition, the United States has ensured protection of all the land for public use and enjoyment and management in accordance with the guidelines given by Congress.

If Congress had not acted, though, the State would not have been able to exercise its option and the land might not be available for public use at this time.

The United States does generally not buy easements from States, but we have purchased some easements from municipally-owned land for projects such as National Scenic Trails. However, shared ownership between the Federal and State governments is not uncommon. In the easement, in particular, we have large areas of land that were purchased under the New Deal era and transferred to States at reduced costs, with the United States reserving a reversionary interest to assure public use. Many of these lands comprise major components of State forest systems throughout the East.

Conservation easements such as that used at Nash Stream are but one of many possible approaches to land conservation needs. We do not view this as a precedent for future acquisitions in the area. Consistent with other provisions of Public Law 100-466, we are continuing to work on the Northern Lands Study to review future public land policy options.

This concludes my testimony, and I would be pleased to answer any questions you may have.

[The prepared statement of Mr. Small appears at the conclusion of the hearing.]

Mr. VOLKMER. Does the gentleman from Washington have any questions?

Mr. MORRISON. Mr. Small, I am trying to wade through your written testimony and to mesh it with what we are hearing from Congressman Vento. The partnership which bought the Nash Stream block, which is, as I understand it, the major block that is of interest and on which you are then buying the easement—the parties that bought that, partially the State of New Hampshire and a number of interested groups, were those purchases made on the basis that they were going to be reimbursed somewhat because you were going to step in with easement funds?

Mr. SMALL. This is all going on simultaneously. There are a lot of options being considered as the process is moving along. And really what began to move us toward the easement approach was when the State finally decided they had to move in with a large share of money and Congress began to talk to the fact that really they

didn't want to incorporate this into the White Mountain National Forest at the time. So, with the State having most of the dollars in, and to simplify management implications down the road there needed to be an entity that would be responsible for the entire area, we opted at that point in time to move toward the easement. And everybody was aware as we were going down the process that we were going to try to cooperate if we could.

Mr. MORRISON. We have out our way an organization called the Trust for Public Lands.

Mr. SMALL. Right.

Mr. MORRISON. My experience with them is that they really don't make an investment unless they are pretty sure that the Federal Government is going to step in, or some level of government, and purchase that property.

So what you are saying is that there was an awareness when they put their money up that you were going to use in some way the funds that Congress had pushed your way?

Mr. SMALL. By the time the water hit the wheel on closing, yes.

Mr. MORRISON. What are your plans for management? How are you going to influence the management of this property through this easement?

Mr. SMALL. That is one reason we think the easement is particularly appropriate here. Easements have caused problems in terms of dealing with private landowners and change in ownership and so forth. We don't have that situation here. We are in a pretty cooperative relationship with the State of New Hampshire.

The act spells out the guidelines, and the forest supervisor in New Hampshire will be working with the State in terms of making sure there is clear understanding on the terms of the easement. But the State will be the one doing the basic management of this area.

Mr. MORRISON. Will your involvement push this management more to the side of making it available for recreation or more in the direction of making it available for commercial harvest?

Mr. SMALL. I would say it is going to be very much of a balanced approach. Much of the easement language was derived from some of the same guidelines that were used in the White Mountain National Forest Plan, so the management philosophy will be pretty consistent, fairly multiple-use oriented.

Mr. MORRISON. Thank you. No other questions, Mr. Chairman.

Mr. VOLKMER. The gentleman from Virginia.

Mr. OLIN. I can't say that I really understand exactly what is going on there. The way you are talking about this, this whole project is not one the Forest Service would have initiated on its own; is that correct?

Mr. SMALL. We would not have gone out for this type of an approach if there were some other alternatives. But the partnership was necessary to actually pull this off.

Mr. OLIN. Then you are acting here only because, as you say here, you are authorized and directed to acquire a certain amount of land by this public law that was passed; is that correct?

Mr. SMALL. The public law set the guidelines, right.

Mr. OLIN. But you are not obliged by this to engage in a conservation easement. You were to acquire the land. Is that correct?

Mr. SMALL. Right. We had other options, that is true.

Mr. OLIN. I gather then that you didn't acquire the land because you didn't really have enough money to do it, to acquire the land; is that right?

Mr. SMALL. Exactly.

Mr. OLIN. And so why are you going ahead this way? You are doing something you really would rather not do, I take it?

Mr. SMALL. No. We think in this case—New England has a long history of working effectively with the Forest Service on a lot of projects and it has been a very good relationship. We see in this situation an opportunity to try another approach. When we looked back at the history of this and the way it evolved, and it looks like there is clear direction that this should not be incorporated in the national forest at this time, and the State put up the bulk of the money, this just looked like an excellent opportunity to try out a different partnership approach, and that clearly was the direction in the act.

The act talked a lot about supporting the State and conservation group initiatives. And also to be sure that the management direction was clear to the public.

Mr. OLIN. So this easement has the practical effect of getting this land managed as though the Forest Service held the land; is that the idea?

Mr. SMALL. It has a practical effect of having it managed according to the way the Act prescribes, which happens to be very consistent with the way most national forests are managed in terms of multiuse orientation.

Mr. OLIN. Mr. Chairman, I am going to have to study this a little bit more before reaching any conclusion on it. Thank you.

Mr. VOLKMER. The gentleman from Oregon.

Mr. SMITH. Thank you, Mr. Chairman.

Who will pay the taxes on the acquired land?

Mr. SMALL. It wouldn't be—the United States would not be making any returns, and I don't know what the State law in New Hampshire is regarding their returns to the counties and so forth.

Mr. SMITH. Who will own the land?

Mr. SMALL. It is really going to be a partnership interest, but the fee title per se would be with the State of New Hampshire. This is called a conservation easement deed but it is constructed differently than a lot of conservation easement deeds. There is some affirmative responsibilities in there and it is actually, you could almost call it a type of reserve interest deed. So we really are closer to being partners in this ownership than we would be in almost any other situation.

Mr. SMITH. How much more money would it have taken for the Federal Government to appropriate to gain the same kind of control over the land in addition to the amount they appropriated?

Mr. SMALL. It would have been approximately, oh, I am just guessing, about $7 million.

Mr. SMITH. How much?

Mr. SMALL. About $7 million.

Mr. SMITH. And that $7 million it appears—is that the same $7 million that the State of New Hampshire is putting up?

Mr. SMALL. Yes.

Mr. SMITH. OK. So the State of New Hampshire is putting up most of the money. The Forest Service is putting up the money appropriated in the bill that has been used, some would say, rather than fee simple which was directed by Congress, but rather you determined to use it for easements which gives you greater opportunity for more acres. Therefore, the State of New Hampshire didn't have to put up any more money.

Mr. SMALL. Right.

Mr. SMITH. Congress didn't have to put up any more money.

Mr. SMALL. Right.

Mr. SMITH. And you got the same result.

Mr. SMALL. Exactly.

Mr. SMITH. Sounds to me like you made quite a deal.

Mr. SMALL. Well, we thought so at the time.

Mr. VOLKMER. Mr. Small, where else do we have this type of easement, conservation easement, in a State forest?

Mr. SMALL. The only thing that I can—the National Forest System doesn't that I am aware of, but I believe the National Park Service has acquired easements like this along the Appalachian Trial on some municipally owned lands. But I don't know of any on State forests.

Mr. VOLKMER. State forests?

Mr. SMALL. I don't know of any on State forests.

Mr. VOLKMER. Right. So we are breaking new ground as far as State forests is concerned?

Mr. SMALL. Yes. This is—yes, that is true.

Mr. VOLKMER. My question then comes, are we starting a new program?

Mr. SMALL. We do not intend this to be a precedent. This was a unique situation that everybody has to act together and act quickly. Diamond put the lands on the market. A developer moved in and took an option on the property. Our appropriation process wouldn't move quickly enough. There was so much money involved that everybody had to pool their resources to actually respond as rapidly as we wanted to.

Mr. VOLKMER. All right. The State of New Hampshire exercised the option. They went ahead and acquired.

Mr. SMALL. Yes.

Mr. VOLKMER. When did we acquire the 4,500 acres of title to land adjacent to the existing boundaries of White Mountain?

Mr. SMALL. Those 4,500 acres are scattered tracts inside, primarily inside and adjacent to White Mountain. I believe we closed on those in October.

Mr. VOLKMER. You used part of this appropriation?

Mr. SMALL. Yes.

Mr. VOLKMER. Are there any other tracts of this land that the State acquired that we are now going to acquire a conservation easement in that are also adjacent to the White Mountain National Forest?

Mr. SMALL. This is the only conservation easement we have planned at this time in the State of New Hampshire.

Mr. VOLKMER. No. I didn't ask that. I will repeat the question.

Are there any other tracts of the land acquired by the State in which we are only acquiring a conservation easement that are adjacent to the White Mountain National Forest?

Mr. SMALL. No.

Mr. VOLKMER. None of them are?

Mr. SMALL. No.

Mr. VOLKMER. The land is how far distant from the White Mountain?

Mr. SMALL. I may have misunderstood that. I thought you were asking are there any other tracts where we plan to acquire——

Mr. VOLKMER. No, I didn't say plan at all. We have the White Mountain National Forest up there. You have now acquired fee title to 4,500-acres of land from the State, as I understand.

Mr. SMALL. Right.

Mr. VOLKMER. From the State.

Mr. SMALL. That is true.

Mr. VOLKMER. Now the State has acquired fee title and we are getting a conservation easement in other lands up there; correct?

Mr. SMALL. True. That is right.

Mr. VOLKMER. Those lands that the State is acquiring and that we are only acquiring a conservation easement in, are any of those lands adjacent to the White Mountain National Forest?

Mr. SMALL. They are nearby but they are not—they don't adjoin the Forest. They are a half mile, something like that.

Mr. VOLKMER. Pardon?

Mr. SMALL. They are probably a half mile distant, something like that.

Mr. VOLKMER. All right. What is the reasoning why the U.S. Forest Service could not have acquired fee title to some of those lands in place of a conservation easement in all of the lands?

Mr. SMALL. We could have. We could have gone ahead and fee partitioned, as it was talked about here. However, as has been mentioned before, the State was putting up the bulk of the money. The State desired to manage this as a State forest. Our experience indicates that when you are managing public land the less confusion you have over who actually does manage it the better off we are. The conservation easement would assure that the congressional intent of the way the property would be managed would be accomplished over the entire area, rather than having split jurisdiction and having different types of management possibly occurring on the two parcels. So we opted to go with the easement over the entire 39,500.

Mr. VOLKMER. All right. Now, the gentleman from Oregon and the gentleman from Washington have brought about the question of the appraisal, or the value of the conservation easement, and I am still a little dense. I want you to tell me again how we are going to get this $3.95 million back out of the conservation easement.

We have an appraised value of $7 million or something. How are we going to get that $7 million back, and how long is it going to take?

Mr. SMALL. I didn't realize we were actually thinking about going in and getting it back immediately. We may or may not. But the way this is appraised, of course, was if this is offered on the

open market before this easement was imposed and after the easement was imposed what would be the difference in value, and the difference in value exceeds 3.95.

The act requires us to come back to Congress within 2 years of the date of the act and let you know some recommendations on the future disposition of the property, and we aren't prepared to come forward with those recommendations yet. But those are, that is also in the act. And I think any question about whether we would actually be acquiring any additional interest would be addressed at that time.

Mr. VOLKMER. I am not asking acquiring any additional interest. All I am asking about is—in other words, you say that we are probably never going to get any of the 3.95, any of that back. That is gone.

Mr. SMALL. Yes. I would say that is part of the property price. We are sharing it with the State.

Mr. VOLKMER. All right. And we get no return?

Mr. SMALL. There is no revenue, no.

Mr. VOLKMER. Never will be any revenue.

Mr. SMALL. Not unless that property went on the market. The State and we decided to divest of it. At that point in time we would get revenue. At that point in time there would be substantial value in the rights the United States acquired.

Mr. VOLKMER. Well, no one is acquiring it—I hope they are not acquiring it with the idea of later on divesting.

Mr. SMALL. No, I don't think they are.

Mr. VOLKMER. That isn't the purpose. So what I am saying is, the State will obtain all of the revenues off of the land that is being acquired and we are getting a conservation easement, is that not correct?

Mr. SMALL. That is true.

Mr. VOLKMER. To be honest with you, Mr. Small, that doesn't look like a very good investment. Would you make that kind of investment yourself?

Mr. SMALL. Well, I would, in dealing in the private market—

Mr. VOLKMER. I mean, if you had somebody over here that was going to get all the money, and he says, "I need some help to acquire this business," and you will take a reversionary interest in that business which you hope to get no return off of, are you going to give him your money? Give it to him? Not loan it to him, give it to him?

Mr. SMALL. No, I wouldn't do that as a private citizen.

Mr. VOLKMER. The Government does crazy things, doesn't it? I mean that is what it amounts to, and that is why I think Mr. Vento is a little upset about it. We are acquiring something that has tremendous value, tremendous value, twice what we are paying for it.

Mr. SMALL. But the objective in here is to achieve a public purpose that——

Mr. VOLKMER. I won't argue that. I will agree with that. I won't disagree with it. It is just a question of what we are doing, and I think that upsets Mr. Vento, and to be honest with you, it upsets me. Maybe not to the extent he is upset. There are going to be things going down in the future. But what I see could perhaps

happen, perhaps the State of Missouri, someone out there. We have a national forest, and now we have got some private landowners out there, and they say we would like to sell off our land, and the State says, "Well, we would like to purchase it but we don't have enough money. We're broke too." So they come up here and, "OK, we will buy it for you, or participate in it." But we get nothing in return.

Mr. SMALL. I would say the circumstances that surrounded this acquisition were unique. We have a specific piece of legislation addressing a specific acquisition, and most of our other acquisitions are carried out under other authorities.

Mr. VOLKMER. I understand that. But it is going under the Weeks Act.

Mr. SMALL. It is going to be—yes, the same status as the Weeks Act land.

Mr. VOLKMER. Right. It is just a little different method of acquisition. There is no question about that.

Mr. SMALL. Exactly. Right.

Mr. VOLKMER. And you say it doesn't set any precedent. Well, you may say so, but to some of us who are looking at it are starting to wonder if it is not setting a precedent. That is what concerns some of us. Thank you very much.

Does the gentleman from Virginia have any further questions?

Mr. OLIN. Yes, Mr. Chairman. I am beginning to get the gist of this thing a little bit better.

This land doesn't really have much to do with the White Mountain National Forest; is that right?

Mr. SMALL. It is located nearby.

Mr. OLIN. How much of it is actually adjacent, borders on the national forest?

Mr. SMALL. I don't think any of it actually touches the border. It is an adjacent drainage, is what it amounts to.

Mr. OLIN. So it is in the general area. Could be a half a mile away.

It is a scheme under which the State is going to get some compensation for managing land for its own purposes, and it is just getting some free money out of the Federal Government, isn't it?

Mr. SMALL. Well, in turn, for the money they are going to manage it the way Congress directed it be managed.

This map shows the relationship.

Mr. OLIN. Yes. I think Congress should change its mind then.

Mr. SMALL. This map shows the relationship of the Nash Stream property to the White Mountain National Forest. The red is the Nash Stream property, and directly south of that is the northern unit of the White Mountain National Forest.

Mr. OLIN. But you are saying the State is going to manage that as it would manage any State forest land; is that correct?

Mr. SMALL. They will manage it according to the terms of the easement.

Mr. OLIN. Well, I don't know. Is that like they manage their other State forest areas? It may be according to the easement. I mean, is this just a subterfuge?

Mr. SMALL. I would rather defer to the State on how consistent this would be with their other, you know, management practices on other State lands.

Mr. OLIN. Mr. Chairman, I would say this appears to be a very odd arrangement, and I am not so sure it is in conformance with the intent of the legislation. Thank you.

Mr. VOLKMER. I thank you.

The gentleman from Oregon.

Mr. SMITH. Thank you, Mr. Chairman.

This additional 40,000 acres, as I understand, was attempted to be purchased because there was going to be a threat of development.

Mr. SMALL. That is true.

Mr. SMITH. Of splitting the land up, I suppose, in parcels and selling it. Some sort of a land division scheme. And that was imminent, as I understand some of the testimony. So something had to be done quickly or that would occur, and, of course, the land value would go up extremely high as a result of that subdivision and development.

So the State of New Hampshire contacted the USDA. In the meantime, this process is going on with the appropriation. The appropriation wasn't enough to go out and buy it fee simple, so with the State of New Hampshire, as I understand this web of intrigue, that there was a deal struck whereby you could spread the easement money over more acres than you could spread the fee simple purchase, and that enabled you to accomplish the management purposes which were developed for 40,000 acres rather than a smaller number of those acres. And it was all in one block, so you had to buy it in one block; otherwise, you would have lost the impetus of what you call taking it out of development hands—developers' hands.

Is that, briefly, the way the thing was structured?

Mr. SMALL. Yes, that is pretty accurate.

Mr. SMITH. Well, "pretty" is close enough for the Government, of course, as you know. Pretty accurate is about all we can do here.

How much revenue flows from these lands to the State of New Hampshire?

Mr. SMALL. I couldn't answer that question. I would have to defer to the State on that. Of course, they have just acquired title to it, so I don't know if they have an estimate of the potential revenues or not.

Mr. SMITH. Well, part of the interest of this committee, obviously, is to determine how much money we are losing in the purchase of this program versus how much money would be returned to the Federal Government if we owned it fee simple. I would like for you to get me an answer to that question. Will you?

Mr. SMALL. OK. You would like to know the amount of Federal revenue lost as a result of this transaction, this type of transaction; is that right? Potential revenue.

Mr. SMITH. The State of New Hampshire receives the money from even the federally purchased—even the easements that the Federal Government is paying for; right?

Mr. SMALL. I don't—no, I don't believe the State of New Hampshire is receiving any money from the United States other than the payment of the easement.

Mr. SMITH. No. No. If you were challenged because the Federal Government puts up $5 million and the State of New Hampshire gets all of the revenue from those lands——

Mr. SMALL. OK, yes.

Mr. SMITH. I want to know how much those lands produce so I can determine how big a bucket this is.

Mr. SMALL. Fine. We will work with the State and provide you an answer on that.

Mr. VOLKMER. We would appreciate having that, if we could, within the next 10 days.

Mr. SMALL. OK.

[The information follows:]

Q. How much revenue would be generated for the State of New Hampshire and how much would the United States forego as a result of the acquisition of a conservation easement?

A. Estimated annual revenue from timber for the 39,500 acre Nash Stream tract: 8.876 million board feet valued at $290,000.

Estimated cost of timber production (based on Timber Sales Program Information Reporting System (TSPIRS); the average timber sale preparation and administration costs for the White Mountain National Forest in FY 1988 were $29.34 per thousand board feet. The 8.876 million board feet multiplied by $29.34 per thousand board feet equals $260,500.

Thus, assuming that revenue and cost would be similar for either the State or the Forest Service, the State of New Hampshire would net about $29,500 annually in revenues. The United States would appear to forego a portion of this revenue as a result of the conservation easement purchase. Because the Forest Service was only funded to acquire 40 percent of the total, the net amount foregone would approximate $11,800. (The gross amount foregone would be $116,000.)

However, we estimate that if the United States acquired a portion of the land in fee, payments to the State pursuant to the 25 Percent Fund and Payment In Lieu of Taxes (PILT) laws would provide $30,500 annually to the State of New Hampshire. If this amount is reduced by the net amount of revenues gained, the resulting net outlay from the United States would be about $18,700 annually.

Mr. VOLKMER. Mr. Small, I have one additional question. In the law as passed there is a provision for a report that is to be submitted to the Congress on the study, I believe, for other Northeast areas including Vermont and New Hampshire, Upstate New York, et cetera. When that is completed, I would appreciate your sending the subcommittee a copy of that report.

Mr. SMALL. Definitely.

Mr. VOLKMER. All right. I also find in the language, I guess it is not pertinent any more except to that part which we did acquire by fee title, because in here we talk about the lands acquired by the United States located outside of and not contiguous to national forest boundaries existing as of the date of the Act, et cetera, et cetera.

We didn't actually acquire any of that, did we? Now, if the Congress didn't intend for you to acquire that type of land, why would that paragraph have been put in there? Section 4.

Mr. SMALL. Section 4?

Mr. VOLKMER. Yes.

* * * The primary management emphasis shall be the sustained yield of forest products consistent with the traditional uses, including public access and conservation of other resource values. Within 2 years from the date lands are acquired pursuant to this act, the Secretary shall report to Congress with recommendations for the permanent administration and disposition of such federally owned lands.

I would like to know why we put that in there if we didn't intend for you to acquire that type of land.

Mr. SMALL. Yes. Well, section 4, as we understand it, seems to talk to the fact that this is supposed to be multiple-use lands. That was the primary emphasis that we get out of that section. But that doesn't seem to be directed to your question.

Mr. VOLKMER. For lands acquired by the United States located outside and not contiguous to national forest boundaries existing as of the date of this act.

Mr. SMALL. Yes, I am following you now. That is strictly to ensure that the stuff that was acquired inside would automatically get Weeks law status, the same kind of management as the other national forest lands. We interpret that to say that lands that we acquire outside of the boundary, that do not have a national forest boundary around them, the intent was that they be managed in this way.

Mr. VOLKMER. In other words, we intended for you to go ahead and acquire some of those lands outside of the Forest Service boundaries.

Mr. SMALL. Lands or interests in lands, right.

Mr. VOLKMER. Pardon?

Mr. SMALL. Lands or interests in lands.

Mr. VOLKMER. That is what it said originally in the act, but it doesn't say that here. Lands acquired by the United States. It doesn't say anything about interest in lands.

Mr. SMALL. Right. We would go back to section 1.

Mr. VOLKMER. I know what you are saying. Excuse me, Mr. Small, we are running out of time. But I believe some of your earlier testimony led me to believe you are saying that we really didn't intend for you to acquire fee title in those lands outside the national park, in the conference report. I believe you said that.

Mr. SMALL. Yes. I think you left the option open but with direction to cooperate in any way we could.

Mr. VOLKMER. But we didn't say that you shouldn't acquire lands outside of the White Mountain National Forest.

Mr. SMALL. Oh, definitely not. We had that option.

Mr. VOLKMER. And you could have acquired by fee title, by the conference report.

Mr. SMALL. Yes, to the extent we had funds available. Right.

Mr. VOLKMER. All right. I have no further questions. Thank you very much, Mr. Small. I appreciate your testimony here today.

Our next witness today is Mr. Will Abbott, executive director of the New Hampshire Land Conservation Investment Program, from Concord, accompanied by Mr. Steven M. Houran, senior assistant attorney general, State of New Hampshire, from Concord.

Mr. Abbott, your statement will be made a part of the record. You may either review it in full or summarize. I just want you to remember we are under time constraints. With that you may proceed.

STATEMENT OF WILL ABBOTT, EXECUTIVE DIRECTOR, NEW HAMPSHIRE LAND CONSERVATION INVESTMENT PROGRAM, ACCOMPANIED BY STEVEN M. HOURAN, SENIOR ASSISTANT ATTORNEY GENERAL, STATE OF NEW HAMPSHIRE, ON BEHALF OF JUDD GREGG, GOVERNOR, STATE OF NEW HAMPSHIRE

Mr. ABBOTT. Thank you, Mr. Chairman. I will try to summarize briefly and then leave some time for questions.

I first want to say on behalf of Governor Gregg welcome and thank you for the opportunity to appear.

I would like to take the committee back to where we were about a year ago this weekend, because when the real action started on this land, and getting back to Mr. Olin's question as to whether this was on a Federal priority list, obviously it wasn't. It wasn't even on a State priority list. But approximately February 1988, Diamond International decided to market this property. And because they put it on the market and the first person to execute a purchase and sales agreements was not a large timberland company, as had traditionally been the case with these large ownerships, the State of New Hampshire at the urging of The Nature Conservancy and the Forest Society got into the picture because this, from our perspective, was land worth protecting for conservation value. So it wasn't on our priority list either, but nevertheless, we had to deal with the situation that came up.

And I think that Governor Sununu at the time decided to get involved for three basic reasons, if I may. One is that it was clear that because the purchaser of this land was not going to be a large timberland owner as had been the case for the last 100 years that the value that this land had to the public, both its commercial timber value to the woods industry, which is very critical to the North Country economy in New Hampshire; the public recreation value—by the good graces of the landowners, private landowners, this land had been open to public access, no fee. For those reasons the State decided that this was an opportune time to protect some land that might not otherwise be protected. The property stands on

its own, as far as the State is concerned, for its value as conservation land.

The second key point, the only way the State could make this happen is to put together a very creative partnership. I understand Mr. Vento's frustration, believe me. A year ago, when Rancourt Associates, which is a developer, put an option on this property, we were very frustrated too because we didn't have the money in the bank to buy it. We needed to find the money, so we did. We put together a partnership, and I would respectfully disagree with Mr. Vento that the Congress didn't entertain the idea of anything but fee ownership, because Governor Gregg, then Congressman Gregg, last April testified before the House Interior Appropriations Subcommittee, Mr. Rudman testified before the Senate committee, and expressed at that time, not that the easement was going to be the means of acquisition but that creativity was needed in order to make this work.

The third point I would like to stress from the State's standpoint is that we intend to manage this property, and this question has come up from a couple of members this morning, with very much the same goals and objectives—certainly those expressed in the statute itself, but very much with the same goals and objectives as the Forest Service intends to have them managed under the terms of the conservation easement.

We are aware at the State level—we are small State, we own 100,000 acres of land before this purchase. We now own 140,000 acres of land as State forest. We are aware that we need to formalize in some manner a public involvement that does not currently exist on how this land is going to be managed. We have had a rich tradition over the last 70 years of working with the Forest Service, with the White Mountain National Forest Supervisor in particular, in coordinating the way lands are managed and used both Federal lands, State lands and private lands in northern New Hampshire.

So, from our perspective, a lot of the concerns on management can be addressed jointly even if the soul fee ownership resides with the State and even if the day-to-day annualized costs of managing this land are going to be paid for by the State.

Final point. A lot of people have questioned whether there is $3.9 million of value here. The appraisal that the Forest Service had done said that the easement was worth $4.2 million. The State of New Hampshire is conveying a bargain sale of $250,000 in trying to be a good partner and getting this task completed. The Nature Conservancy and the Society for the Protection of New Hampshire Forests sold us a mortgage for $3.9 million to cover the Federal portion of this acquisition. The State of New Hampshire is going to pay over $400,000 in interest costs by the time the Federal funds are available at a closing on the easement.

We think we are being good partners. We think we have stuck our neck out. We think the land is going to be protected. And we think that the public purpose being served by this project justifies the basis on which we proceeded.

Thank you.

[The prepared statement of Mr. Abbott appears at the conclusion of the hearing.]

Mr. VOLKMER. OK. Let me ask you, Mr. Abbott, then, what revenues will the Federal Government get from this land?

Mr. ABBOTT. My understanding right now, and I can only talk to the value represented by the timber, we had a complete cruise done and my understanding is that the value of the timber, if you were to cut it to the ground now, is approximately $7 million. The way the State intends to manage that land, the yield over the 50- to 70-year cycle, I can't anticipate what that yield will be. But as the fee owner of the property, the State of New Hampshire will derive whatever benefits come from those timber sales.

Mr. VOLKMER. I didn't ask that. I will repeat my question. What revenues will the Federal Government get from this conservation easement on this land?

Mr. ABBOTT. The Federal Government will get no revenue, period.

Mr. VOLKMER. Thank you. I thought that. The State will get revenues. Who gets revenues from the gravel that is exempted back to the State from this conservation easement?

Mr. ABBOTT. The gravel revenues, part of the consideration of this acquisition was that Rancourt Associates retained the right to extract 5 million cubic yards of gravel over 7 years. That was part of the agreements. We could not have purchased this land if Rancourt—Rancourt insisted on retaining that right if we were going to purchase the land under any circumstances.

Mr. VOLKMER. There are no revenues from that gravel acquisition by that company?

Mr. ABBOTT. There are no revenues to the State of New Hampshire. There are costs, however. We have to manage the extraction. We have to supervise the vendor, Rancourt in this case. One of the things that I think that fee ownership to the State means is we pay the cost of managing the land. That is an annualized cost out of the State of New Hampshire's operating fund.

Mr. VOLKMER. Well, Mr. Abbott, even though I would say that it is a good thing, and I have to commend the State of New Hampshire for saving this land from private ownership and development and that type of thing, I have no disagreement with you and I want to commend those responsible for being able to do that. However, as Mr. Vento said, and it bothers me a little bit, it appears that really what we have done, and call it what you want, we get a conservation easement in land that probably is worthless and really what we are doing is we are helping the State of New Hampshire do a good thing with this $3.9 million. And I won't argue that. That may be a good thing to do, but if it is, and I differ from Mr. Small, if we are going to start down this road we will probably have a good chance of doing it for others also.

Now the question then comes, are we starting a new program? You understand from our viewpoint? We have got—you know, Federal taxpayers' dollars, they are pretty precious these days, just like New Hampshire's dollars are pretty precious. And the way I see it is that we have pretty well given the State of New Hampshire $3.9 million to help them acquire this land. That is what it amounts to.

Mr. ABBOTT. I would agree with that, sir, and I think that without that $3.9 million we would not be here today and that land would not be in public ownership.

Mr. VOLKMER. Let me ask you this then. You look at that land up there. You see where the Nash tract is? Now see where White Mountain is? Why couldn't you have just given us another 1,000 acres or 500 acres or something out of that and gotten the same amount of money?

Mr. ABBOTT. Well, first of all, if the Forest Service would have allowed us to give you 1,000 acres we would have gladly given you 1,000 acres. I am not being facetious. That is part of the reason why it didn't happen. I think we discussed the idea of a split fee ownership. We didn't want to do that because we wanted to protect this land as a self-contained watershed. We did not want to get into the problems of having two separate ownerships with two separate management teams and policies governing one watershed.

But the other issue is that the value, the respective values at which the Forest Service would have been willing to purchase the land and what we paid were not the same. It would have required extensive negotiations to acquire an agreements on the value to convey. And quite honestly, sir, we were up against the time clock.

I kind of hear the suggestion——

Mr. VOLKMER. You know, you could still do that today?

Mr. ABBOTT. Pardon me?

Mr. VOLKMER. You could still do that today.

Mr. ABBOTT. We had to go into a closing on October 27.

Mr. VOLKMER. You have got that done, and you have got a commitment to get the Federal funds. Now what is preventing the State of New Hampshire and the Forest Service in sitting down and saying, "Well, let's scrap this whole easement thing and let's just go ahead and divide that Nash tract up and give the Forest Service $3.9 million in fee title to part of that tract," unless you just don't trust the Forest Service to manage that much of it, or however it may be.

Mr. ABBOTT. Well, if I may, sir, back last October 5, our Governor met with the Secretary of Agriculture. At that meeting they agreed to proceed with the easement. On that basis we agreed to execute the deed on October 27. I can honestly say that we believe the United States Government made a good faith commitment to execute a conservation easement if the value was there. We would not have gone forward with that closing, I don't believe, without that commitment. Now we believe that the Federal Government has made a commitment, and we also believe it intends to keep that commitment. I believe it would have affected our decision-making in October had we not been able to achieve that agreement.

Mr. VOLKMER. I know we are running out of time and I am taking up more than my share of time. But, Mr. Abbott, I guess my closing comment is going to be that I don't believe that the Congress would have approved the language that is in the conference report if it had known that we were only going to get a conservation easement for $3.9 million, and I don't find anything in that conference report that says anything about conservation easements. I find legal terms like "interests in land," which a conservation easement is. But, if you understand what I am saying is you

are saying that the Federal Government made that commitment. I guess I am not part of the Federal Government. I just got bailed out of the Federal Government by an administration. They made—the administration made that agreement, not, as far as I am concerned, the Federal Government. I get tired of hearing things that somebody in any administration does and then we in the Congress just have to go along with whatever they say. You understand where I am coming from?

Mr. ABBOTT. I understand thoroughly, and I respect the fact that the Congress—and we have this situation at the State level too—government does not move rapidly sometimes. And I would only ask you to understand our situation last year. That we had essentially 4 months to work in and protecting the land was our governing goal at the time. I respect the fact that under normal circumstances, and I certainly, from the State's perspective, we have learned a lesson here, and I think that we also understand Mr. Vento's concern very thoroughly and your own concern.

And I don't want to suggest to you that we deliberately pulled a fast one. We didn't. We had to pull a fast one to make this deal work. But we understand your frustration, and I can assure you that we won't be before this committee again in this same circumstance.

Mr. VOLKMER. Thank you very much, Mr. Abbott.

The gentleman from Washington.

Mr. MORRISON. Thank you, Mr. Chairman. We either have a scam or some very innovative financing. I would love to come down on the side of innovative financing.

I guess a question to me that is important is, when our good friend Judd Gregg was here testifying, or in front of the Interior Appropriations Committee, on this bill, did we really have a fairly good idea between the State and at least your representatives in Congress as to how this whole thing might play out? Was there an intention that this is the way this would work? And if so, it is unfortunate that we have got Mr. Vento so vented on the subject.

Mr. ABBOTT. I think that there was an intention at the time, and the time we are talking about is April-May 1988, to keep as much flexibility in the process. Nobody decided in April or May 1988 on our end that this was going to be conveyed by easement. We were more concerned about executing a purchase and sales agreements with Rancourt, and all of our activity was directed at that. And quite honestly, you know, we were not thinking about at the State level how we were going to execute the final agreements. We wanted to have as much flexibility as possible.

Mr. MORRISON. And that flexibility was built into the language of the bill as you saw it?

Mr. ABBOTT. That was my understanding of Senator Rudman's intent, and all four of our Members in Congress agreed that we wanted to pursue that goal.

Mr. MORRISON. Mr. Chairman, I think we have a great example here of innovative legislating and follow through by an agency that saw an opportunity for innovative financing. I think we probably got what the sponsors of the legislation had in mind.

With that, I have no further questions. By the way, when you are planning to manage this forest, some of us from the West

would like to make a gift of some spotted owls, just so this can be complete. [Laughter.]

Mr. VOLKMER. The gentleman from Virginia.

Mr. OLIN. Just to say, I don't think we could use any surrogate forests in Virginia. We will just stick with straight purchases.

Mr. VOLKMER. The gentleman from Oregon.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Houran, tell me quickly where you think we are in this process between the State of New Hampshire and the Federal Government and the commitment to buy this Nash piece of land? Tell me quickly where you think we are in that process?

Mr. HOURAN. We are very close to closing. We are waiting only for the title insurance binder to come from Lawyers Title Company, then reviewed by the Department of Justice, and then closing.

Mr. SMITH. You are not waiting for any Federal funds because the Nature Conservancy, I understand, picked up the tab, and you have made a deal to reimburse them as soon as you get the Federal funds.

Mr. HOURAN. That is correct, sir.

Mr. SMITH. So let me ask you, legally you have determined that and analyzed the authorization in the act to allow—in your opinion, to allow the Federal Government to use this money for conservation easements rather than fee title. Have you looked at that portion?

Mr. HOURAN. I have, sir, and that is my interpretation.

Mr. SMITH. Then, if the Congress for any reason withholds the money, we can't stop the deal. Only the Nature Conservancy gets stuck, as I understand this process. Is that correct?

Mr. HOURAN. Obviously, I am not a lawyer for any entity of the Federal Government, but that is my interpretation.

Mr. SMITH. So what action could this committee undertake at this point to stop the transaction?

Mr. HOURAN. To put it bluntly, I don't think you can. This acquisition is exempted from oversight.

Mr. SMITH. I don't see any way we can either. And that is not bluntly, that is the fact. So I guess that ends my questions.

Mr. VOLKMER. Gentleman from Idaho.

Mr. STALLINGS. Mr. Chairman, let me just make a quick statement. A year or so ago Governor Sununu was in Idaho and he spoke to a group. We had an economic development forum and he spoke with great pride on how the State of New Hampshire was able to balance its budget in a fiscally responsible fashion. [Laughter.]

It has now become very clear to me how he has done that. I certainly congratulate the Governor and the State delegation for their innovative dealings with the budget. I wish the Federal Government had a similar opportunity.

Mr. MORRISON. Well, now it does that he is Chief of Staff down at the White House. He brought those same skills with him.

Mr. STALLINGS. Maybe there is hope for this budget after all.

Mr. VOLKMER. I want to thank you, Mr. Abbott and Mr. Houran for being here today, and your testimony.

We have a vote on right now, so I am going to break for the vote and come right back. And we will have our fourth panel: Mr. Ste-

phen D. Blackmer, Society for the Protection of New Hampshire Forests, from Concord; and Mr. Edward L. Spencer, New Hampshire State director, The Nature Conservancy, from Concord.

Thank you very much.

[Recess taken.]

Mr. VOLKMER. The subcommittee will come to order, and we will have our panel up. Also, I would like for Mr. Michael Kellett, regional director of the Wilderness Society, from Boston, to come to the table. We are pressed for time. Would the witnesses please come up to the table.

Your statements will be made a part of the record. You may either summarize or read your statement in full. However, I want to tell you right now, we are going to quit at a quarter till. We have about 25 minutes. If your statement is going to take you longer than, say, 7 minutes to read, you can read part of it, go that 7 minutes, or you can review it and summarize it, however you so desire. You may proceed.

Mr. Blackmer.

STATEMENT OF STEPHEN D. BLACKMER, VICE PRESIDENT, POLICY, SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS

Mr. BLACKMER. Thank you very much, Mr. Chairman. I am Stephen Blackmer. I am vice president for policy for the Society for the Protection of New Hampshire Forests.

Very briefly, the Forest Society was founded in 1901, with the express purpose of creating a Federal forest reserve in the White Mountains of New Hampshire. We worked closely for a decade with Congressman John Weeks, who was born in New Hampshire, to pass the Weeks Act to enable the creation of the eastern National Forest System. We have a long and very close relationship with the Forest Service with the White Mountain National Forest and are strong advocates of national forest ownership and other public land ownership in the State of New Hampshire.

We got involved in this acquisition last spring with the Nature Conservancy in an effort to purchase, originally from Diamond International and then from Rancourt Associates, 45,000 critical acres in the State for public purposes of timber production and public recreational access, hunting and fishing, watershed protection—the full range of multiple uses.

Without going over the chronology, which I think has been gone over a bit already today, we, with the Nature Conservancy, agreed to loan to the State of New Hampshire enough money to close the acquisition of this land, with the knowledge that a Federal appropriation would be forthcoming. We made that loan only with that understanding, and could not have done it otherwise.

There is a fundamental question here of what value each party is getting for this deal. For our money, we are getting the guarantee that this land will be protected in public ownership in perpetuity for the full range of public conservation uses. I respectfully submit that the United States is getting a guarantee of that public availability for its money. For the United States to have achieved the

same level of protection for the same public purposes without the assistance of the State, it would have cost $12 million.

I agree with you that, in fact, the Federal Government is helping the State to do a good thing. But, to an equal or greater extent the State is helping the Federal Government to do a good thing. It takes the partnership of the Federal Government and the State government, and in this case private conservation organizations, to make this possible.

As you are well aware, we have got in the rest of northern New England perhaps as many as 20 million acres that may be coming under the—or some are and some will be in the future coming under pressure for development in the same sense, same way that this land did last year. There is no way, I believe, that we will be able—Federal, State, private organizations, anybody—to purchase all of the land that we will ultimately want to protect, and it is essential that we find some creative and cooperative ways of working to protect that land.

I suspect, as Mr. Abbott said, that we will never be before you with quite this circumstance again. I certainly hope that next time we will be out in front of the deal and won't have to react in this kind of haste. Nevertheless, if we are going to achieve the public purpose, the Federal purpose as well as the regional purpose of protecting those lands in the rest of northern New England, it is going to take us all working together. And I respectfully submit that this is our first attempt to make that work. It may not be perfect but it is the best we have been able to do, and I think we should learn from this and move forward to work on the remainder of the lands in the region.

It will take an effort of vision with the breadth of that of the Weeks Act to make this possible, but I think that that can be done. Thank you very much.

[The prepared statement of Mr. Blackmer appears at the conclusion of the hearing.]

Mr. VOLKMER. Thank you very much.

Mr. Spencer.

STATEMENT OF EDWARD L. SPENCER, DIRECTOR, NEW HAMPSHIRE FIELD OFFICE, NATURE CONSERVANCY

Mr. SPENCER. Mr. Chairman, members of the subcommittee: My name is Edward L. Spencer and I am the State director of the Nature Conservancy's New Hampshire field office. I appreciate the opportunity to appear before the subcommittee to provide background information on the negotiations and the interim financing of the Nash Stream acquisition in New Hampshire.

I would also like to provide a little bit of background. The Nature Conservancy is a national, nonprofit land conservation organization with over 500,000 members. Our principal and sole objective is to identify the best and most important examples of America's ecosystem types and rare species habitats, this country's biological diversity, and to provide protection for the most threatened of these areas and species.

The Nature Conservancy has been actively involved in the effort to protect Nash Stream because of its ecological importance.

Among its many attributes the Conservancy has identified this as being an outstanding biological resource. Based on our field work, we have identified 21 occurrences of rare species and natural communities on these lands.

The Nature Conservancy's role in this project has been threefold. First, the conservancy identified the area as having outstanding natural characteristics. Second, the conservancy initiated negotiations in concert with the Society for the Protection of New Hampshire Forests to protect, through acquisition, the most significant portions of Diamond International's lands in New Hampshire including Nash Stream. The conservancy was also active in protecting portions of Diamond's lands in Vermont, Maine and New York. Third, The Nature Conservancy provided a bridge loan to enable the State and Federal governments to close the acquisition at the appointed time.

The Nature Conservancy learned of the potential opportunity to protect a significant portion of Diamond International's lands in northern New England in the autumn of 1987 when Diamond International provided us with access to their national land records. Based on this information the conservancy made an offer to Diamond to acquire all their land in New Hampshire based on a 2-year option which would provide us with the opportunity to go to the State and Federal governments to seek the needed funding for that property. This offer, however, was rejected. Diamond listed the land with a real estate broker and it was sold to Rancourt Associates.

Immediately following that, in fact, the next business day, The Nature Conservancy and the Society for the Protection of New Hampshire Forests opened negotiations with Rancourt. Our goal was to provide protection for as much of the most significant lands as possible within the limits of expected or hoped for funding. We understood that both State and Federal resources would be needed to accomplish this protection project. The earnest efforts of Senator Rudman and the New Hampshire delegation encouraged us to believe that Federal funds would be available to help protect at least a portion of these lands. Even with the Federal funds, however, it was unlikely that those on their own would be sufficient to protect all the lands which we felt needed to be protected.

It is important to remember that during these negotiations The Nature Conservancy's concern was to identify sufficient funds from a variety of sources to complete the needed acquisition from the developer. A year ago, it seemed highly unlikely that we would in fact succeed in this. Only through the committed and sustained cooperative efforts of all concerned was this, in fact, accomplished.

Despite our best efforts, at the closing with Rancourt Associates, in October, Federal funds were not available to complete the Federal portion of the purchase. Consequently, The Nature Conservancy was requested to provide a loan of $3.95 million to the project on behalf of the Forest Service pursuant to a letter of intent, dated October 26, 1988. To facilitate this transaction, the State took title of the property and gave a mortgage on the Nash Stream tract to The Nature Conservancy and the Society for the Protection of New Hampshire Forests as security for the loan. At that time we antici-

pated that Federal funds would be released in a matter of a few weeks.

It is clear that the Nash Stream tract would have been very much at risk from a variety of development and subdivision proposals had Rancourt Associates retained the property. The Nature Conservancy has committed almost $4 million of its revolving funds to this project. We hope that these funds can be released as quickly as possible, so that these funds can be repaid. This will enable the conservancy to commit these funds to additional protection projects, including potentially additional projects in the Nash Stream Area which have the potential to be protected, as well as in New England and around the country.

Thank you. That concludes my statement.

[The prepared statement of Mr. Spencer appears at the conclusion of the hearing.]

Mr. VOLKMER. Thank you very much.

Mr. Kellett.

STATEMENT OF MICHAEL J. KELLETT, NORTHEAST REGIONAL DIRECTOR, WILDERNESS SOCIETY

Mr. KELLETT. Yes. Thank you, Mr. Chairman, for inviting me and giving me an opportunity to discuss some of these issues. I have submitted my testimony in writing and I will just try to summarize briefly the thrust of it.

We agree that this is an outstanding tract of land that deserves protection, and we have supported the efforts to protect it from the very beginning, as a matter of fact. We have expressed in the past skepticism as to how well an easement approach might do that, and we provided comments to Congressman Yates, for example, on that issue.

One of the things that I think—the thing, perhaps, that has gotten the most discussion is the whole issue of the value of the easement and the return to the taxpayer. I would argue that that is a fundamental flaw with this. That an easement on State land is totally different than an easement on private land. That to buy a Federal easement on 40,000 acres of State land is redundant, it is unnecessary, it keeps the State from doing things that the State wouldn't do anyway. That, if this were on private land, however, in a lot of ways it would make a lot of sense, and there really would be a danger of this happening.

I would argue that it doesn't make the money go farther because you could spend the same amount of money, as you have mentioned, to buy a part of the land in fee. The State would buy the rest in fee, and the land would receive at least the same level of protection.

I don't argue that the easement would do a good thing, and I think, you know, we are not concerned that the land is going to be trashed under the easement approach versus a split full fee approach. But from the standpoint of the American taxpayer, we don't think there is anything of value returned for the easement other than knowing that we have done a good thing for the State of New Hampshire, which has some value but I don't think 3.95 million dollars' worth of value.

I think that is a very point, and I think that is probably why we haven't seen Federal easements on State land in the past, because it just really was something that the Federal Government didn't see fit to buy.

I think what our preference would have been all along is to—for the feds to buy a third interest in fee in the land and add those lands to the White Mountain National Forest. The entire tract would be protected from development, subdivision, and so forth, and the State and the Federal Government could work together in a cooperative agreements to make sure they were being consistent in the way they managed the lands. The State would get its money back. The Nature Conservancy and the Forest Society would be reimbursed. We realize that there are other logistical problems involved, however.

I should point out also our concerns about the whole public policy aspect of this. Perhaps the biggest concern I have in that area is that the public, the people who would put forth the $3.95 million have nothing to say about the management of this land. The American taxpayer, once the money was spent for the easement, would have no input, no involvement, no appeal, no recourse. We would be totally on the State's good will in managing the land. And perhaps they would do an excellent job, but the Federal taxpayer would have no insurance of that. If the Federal taxpayer decided the land should be managed differently in the future, they would have no recourse as well. No easement can provide that, and to me that is a strong argument for fee acquisition in this case.

We have heard about partnerships, but in a partnership you need to be equal or at least proportionate; each partner needs to get a proportionate return on what they have put in. Clearly there is controversy as to how fair the proportions are in this case. I think the whole fairness issue is an important issue, and in the future, if we are going to want to have partnerships, and we certainly think they are going to be necessary, between State and Federal governments, it needs to be something that both parties can feel comfortable and good about both now and in the future. And I think that is a very important issue that is somewhat intangible but has long-term ramifications.

The issue of congressional intent is another one that we have heard a lot about. I think that is something the subcommittee will have to decide. And clearly, from some of the correspondence we have seen from yourself, Mr. Chairman, and Mr. Yates, Mr. Vento, there isn't a unanimous agreements on what the intent was, and that bothers us as well as it bothers you.

To conclude, we would be very pleased to see a third interest of this land purchased in fee by the Federal Government and added to the White Mountain National Forest. However, we are not interested in flogging this issue to the point where it is going to harm the public interest or the State of New Hampshire, the good faith efforts of the State and the organizations involved in New Hampshire. We are not sure what the recourses are at this point for Congress and the administration, but we think that all of these issues that have been discussed really need to be thoroughly thought about, at least in future cases, if not in this particular case.

I think if this particular agreement goes forward as proposed by the administration, there should be a memorandum of understanding drafted by the Forest Service and the State of New Hampshire to ensure that there will be a cooperative management process that will develop a planning and monitoring, standards and guidelines that both entities feel comfortable with, and that there will be full public participation in planning and management actions.

We would also like to see the proclamation boundary of the national forest extended to include the Nash Stream tract and perhaps additional areas around that, if the State supports that.

We also think the precedent set here is partly that of the baggage we are feeling from not having planned ahead in the region, and I don't think anyone would disagree with that. There was no land protection plan or mode in place before the Diamond lands were sold. We think that, you know, because of that the conservation organizations who have put their money forward have seen the thing delayed and dragged on. There was a lack of mutually agreed upon protection and management goals up front. There was no public involvement. We think that this is the beginning of what may be a number of cases like Nash Stream, and Congress has put forth a lot of effort to help provide funds for the Northern Forest Lands study. There have been appropriations from the Land and Water Conservation Fund to purchase important lands in the region. Our feeling is that in general all of the parties involved in this have a lot more in common than they have differences overall, and that regardless of the outcome of Nash Stream we should learn from it and move toward to protect lands in the future. I think that is going to need the help of all parties including the States, including the Congress, and private conversation organizations and the public, most important of all, I think. That is certainly one of the Wilderness Society's highest priorities for the future of our operations in the Northeast. We are certainly pledged to that.

And I want to thank you for the opportunity to speak to you today.

[The prepared statement of Mr. Kellett appears at the conclusion of the hearing.]

Mr. VOLKMER. Thank you, Mr. Kellett.

I quite agree with you that conservation easements on State-owned land really has no value. What is very interesting to me is the fact that the Forest Service now comes up with a value way in excess of $3.95 million. I don't know where they are getting it, but I guess it is all right, because they have to have that in order to justify the expenditure of the Federal funds.

And you know, the other thing I would like to say is: Snooker me once, shame on you. Snooker me the second time, shame on me.

Mr. Blackmer, in your statement, in the last paragraph on page 2 of your statement you say that New Hampshire offered the Forest Service to acquire a part of this ground in fee title and the Forest Service refused to do so on the basis that the appraised value was less than what the State of New Hampshire paid for it and therefore they couldn't acquire it. Is that correct?

Mr. BLACKMER. That is my understanding, Mr. Chairman. The Forest Service appraised value was at approximately $230 per acre. The State, the only deal the State could make with the developer

was at $280 an acre. The Forest Service offered to buy the land at $230 an acre and the State would not agree to give it at that, below its value.

Mr. VOLKMER. So we are going to give the State of New Hampshire $3.95 million for nothing, and that is OK under our system. But we couldn't acquire land for what we said was higher then in fee title. Something tells me there is something wrong in government somewhere.

Mr. BLACKMER. If I might, Mr. Chairman, I believe that had the Federal Government bought—let's say it had bought 10,000 acres for the $3.9 million. It would have had guaranteed protection and management of those 10,000 acres, but on the remaining 30,000 acres there would have been no national interest expressed. I believe for the $100 acre overall the Federal Government has a guarantee of a certain level of management and protection over 40,000 acres rather than merely 10,000. I believe that is a better deal for the Federal Government.

Mr. VOLKMER. If I thought that the State of New Hampshire wasn't going to manage it properly, I probably wouldn't have agreed to give them anything anyway. Surely, I don't think that they are going to mismanage the land.

Mr. BLACKMER. I wish I shared your full confidence, sir.

Mr. VOLKMER. All right. Then that raises a problem, Mr. Kellett, and you have touched upon that a little bit. Does the State of New Hampshire have, like the White Mountain National Forest has a forest plan. Does the State of New Hampshire have such proposals in law for forest plans for the State forests—public comments, hearings, et cetera?

Mr. KELLETT. That is a serious concern of ours. We have worked for years, as you know, at the Federal level to put together a very intricate and extensive legal and regulatory structure to deal with what have been perceived over the years with national forest management and to ensure that the public can be involved in it. That doesn't exist at the State level in New Hampshire. I think there wasn't as compelling a reason in the past for that. We would certainly hope they would put something into place, but right now the Federal taxpayer has no insurance that that will be the case, and that is a serious concern to us.

Mr. VOLKMER. It would appear to me, if the Forest Service is really interested in protecting all of that Nash area, that they would have insisted that that be part of the contract, the deed that they have put in place.

Mr. BLACKMER. May I comment on that, Mr. Chairman?

Mr. VOLKMER. Yes.

Mr. BLACKMER. That right of public involvement is not a property right that the State has the ability to convey to the Federal Government, so it could not have been done in the easement itself. We do strongly agree with you and with Mr. Kellett that that is something that the State needs to develop, and we pledge ourselves to seeing that the State develops that.

Mr. VOLKMER. Is the Governor in favor of it or opposed to it?

Mr. BLACKMER. I guess I can't speak for the Governor. I fully anticipate that he would support that.

Mr. VOLKMER. But he has made no comment on it?

Mr. BLACKMER. To my knowledge. Maybe Mr. Abbott would be able to comment on that.

Mr. VOLKMER. The last thing, and we are running out of time, Stratford Bog. Where is it located in regard to White Mountain?

Mr. BLACKMER. Would you like me to point it out on the map for you?

Mr. VOLKMER. Yes, on the map.

Mr. BLACKMER. That is the Nash Stream parcel in red. The arm extending out to the west is actually the Stratford Bog parcel. Everything that extends out from that edge there.

Mr. VOLKMER. It is in white right now there?

Mr. BLACKMER. No, it is in red, sir.

Mr. VOLKMER. Well, who owns it right now?

Mr. BLACKMER. Right now the developers own that. That was a part of the original—everything in red is the original ownership of Diamond International that we looked at.

Mr. VOLKMER. Does Diamond still own it or has somebody else purchased that?

Mr. BLACKMER. Rancourt Associates, the group of developers, bought that from Diamond. We are negotiating with Rancourt Associates to purchase it now in hopes of having an appropriation from the Congress to add that as a fee acquisition to the White Mountain National Forest.

Mr. VOLKMER. Well, that is too far away. That is too far. That is a lot farther away than the other parts of it.

Mr. BLACKMER. Sir, if we had had the money needed to buy the whole Nash Stream last year, we certainly would have—for the Federal Government. We certainly would have supported that.

Mr. VOLKMER. You understand my facetiousness, I am sure.

Mr. BLACKMER. Of course.

Mr. VOLKMER. Gentleman from Washington.

Mr. MORRISON. Just one question, Mr. Chairman, for Mr. Kellett.

For the dollars available, didn't you make maximum progress toward Wilderness Society goals through this innovative financing?

Mr. KELLETT. I don't think so. I think if we had purchased a third of the land in fee with Federal funds we would protect that land at least as well as it would be protected under the conservation easement. I maintain that the State could have purchased for the same amount of money it put into the deal two-thirds, roughly, of the land, and it would have protected those lands the same way they will be required to protect them under the conservation easement. Because I would maintain that that easement basically requires what any responsible landowner ought to do with their land and that though, perhaps, you couldn't expect that of a private landowner in all cases, since this is public property purchased for the public interest I would expect the State to do at least that well in management.

So, to me you would do at least as well by buying one-third rather than an easement over the whole thing, and you could even do better. And, of course, there is the whole issue of revenues to the Federal Government and so forth, and public involvement, which you don't buy with the easement. So I think it is not just an even trade, 50–50, there.

Does that answer your question?

Mr. MORRISON. Yes, I think so. I have heard from others that this was the only way they could cut this combination of ownership, even though we would disagree with that combination, as I sense you do, because it leaves us with some doubt about what we really have purchased for Federal taxpayers.

Well, this will be interesting. And I am pretty sure that it will guarantee that this kind of thing won't happen again.

Mr. VOLKMER. Let's hope so.

Mr. MORRISON. Thank you, Mr. Chairman.

Mr. VOLKMER. Thank you very much. I appreciate the panel being here today.

That will conclude the hearing.

[Whereupon, at 11:49 a.m., the subcommittee was adjourned, subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

STATEMENT OF
CONGRESSMAN BRUCE F. VENTO
BEFORE THE SUBCOMMITTEE ON FORESTS, FAMILY FARMS AND ENERGY
THURSDAY, JUNE 1, 1989

MR. CHAIRMAN, I APPRECIATE YOUR TAKING THE TIME TO HOLD AN OVERSIGHT HEARING ON THE ADMINISTRATION'S PROPOSAL FOR THE NASH STREAM TRACT IN NEW HAMPSHIRE. THE ADMINISTRATION PROPOSES TO SPEND $4 MILLION OF FEDERAL FUNDS TO ACQUIRE A CONSERVATION EASEMENT INSTEAD OF FEE TITLE FOR VALUABLE NATURAL RESOURCE LANDS IN THE NASH STREAM DRAINAGE ADJACENT TO THE WHITE MOUNTAIN NATIONAL FOREST. I AM COMPLETELY OPPOSED TO THE ADMINISTRATION'S PROPOSAL.

I HAVE BEEN FOLLOWING THE NASH STREAM CONTROVERSY FROM ITS BEGINNING WHEN DIAMOND INTERNATIONAL CORPORATION SOLD THESE FOREST LANDS TO RANCOURT ASSOCIATES, A DEVELOPMENT FIRM, IN 1988. AT THIS TIME, I SPOKE OUT PUBLICLY ON THE NEED TO PROTECT NASH STREAM FROM DEVELOPMENT AND SUPPORTED THE $5.2 MILLION APPROPRIATION TO THE FOREST SERVICE TO PURCHASE THE TRACT AND ADD IT TO THE WHITE MOUNTAIN NATIONAL FOREST. THOSE OF US WHO SUPPORTED THIS APPROPRIATION INTENDED THAT THE FOREST SERVICE PURCHASE APPROXIMATELY 4,000 ACRES OF INHOLDINGS WITHIN THE WHITE MOUNTAIN NATIONAL FOREST AND AS MUCH OF THE ADJACENT 35,000 ACRE NASH STREAM TRACT AS POSSIBLE. THE AGENCY NOW HAS PURCHASED THE INHOLDINGS FOR APPROXIMATELY $1 MILLION BUT HAS YET TO ACQUIRE ANY NASH STREAM LANDS WITH THE REMAINING $4 MILLION.

TO PREVENT DEVELOPMENT THAT SEEMED IMMINENT, THE STATE OF NEW HAMPSHIRE PURCHASED THE TRACT. THE STATE, HOWEVER, ONLY HAD

ENOUGH FUNDS TO BUY PART OF NASH STREAM AND HAD TO BORROW FROM [illegible] PAY OFF THIS DEBT, BUT IS UNWILLING TO USE STATE FUNDS OR TO GIVE UP A SINGLE ACRE OF LAND. INSTEAD NEW HAMPSHIRE REQUESTS THAT THE NATIONAL GOVERNMENT PURCHASE A CONSERVATION EASEMENT OF QUESTIONABLE VALUE INSTEAD OF OUTRIGHT FEE SIMPLE PURCHASE OF THE LANDS. THIS PROPOSAL IS BEING TOUTED AS A NEW AND INNOVATIVE WAY TO PROTECT NEW ENGLAND'S FORESTS.

THERE IS NOTHING NEW OR PARTICULARLY INNOVATIVE ABOUT CONSERVATION TYPE EASEMENTS. IN FACT, THEY HAVE BEEN AROUND FOR 50 YEARS. THE NATIONAL PARK SERVICE, FOR EXAMPLE, BEGAN PURCHASING THEM ALONG THE BLUE RIDGE PARKWAY IN THE 1930'S AND THE FOREST SERVICE HAS BEEN BUYING THEM IN CONNECTION WITH WILD AND SCENIC RIVERS SINCE 1968. FROM THIS LONG HISTORY, WE HAVE AMPLE EVIDENCE THAT THE EASEMENT TRACK RECORD IS NOT GOOD. AGENCIES HAVE FOUND THEM TO BE COSTLY TO MONITOR AND DIFFICULT TO ENFORCE. JUST TO MONITOR THE EASEMENTS ALONG THE ST. CROIX RIVER, THE NATIONAL PARK SERVICE SPENDS APPROXIMATELY $40,000 A YEAR. WHEN EASEMENTS HAVE BEEN VIOLATED, THE COURTS HAVE NOT ALWAYS COOPERATED IN UPHOLDING THEIR TERMS. THE PROPOSED NASH STREAM EASEMENT IS AN EXAMPLE OF THESE PROBLEMS. IT CONTAINS NUMEROUS MANAGEMENT REQUIREMENTS FOR THE FOREST SERVICE AND THERE IS NO ESTIMATE AS TO HOW MUCH IT WILL COST TO FULFILL THESE OBLIGATIONS. IN ADDITION, IF THE STATE SHOULD VIOLATE ANY OF THE EASEMENT'S COMPLEX PROVISIONS, THE FOREST SERVICE'S ONLY RECOURSE WOULD BE TO TAKE THE STATE TO COURT INCURRING EVEN MORE COSTS.

FURTHERMORE, A POTENTIAL SOURCE OF REVENUE, A PROPOSED GRAVEL OPERATION, DELIBERATELY WAS BEEN EXEMPTED FROM THE EASEMENT'S PROVISIONS. NOT ONLY WILL THIS MAJOR DEVELOPMENT BE ALLOWED TO PROCEED WITHOUT ENVIRONMENTAL CONSTRAINTS, BUT THE U.S. TREASURY WILL RECEIVE NO MONETARY BENEFIT FROM WHAT IS PREDICTED TO BE QUITE A LUCRATIVE ENTERPRISE. CLEARLY THE $4 MILLION NASH STREAM CONSERVATION EASEMENT IS NO BARGAIN FOR THE FEDERAL GOVERNMENT AND THE NATIONAL TAXPAYER.

BECAUSE OF THESE DIFFICULTIES, WE SHOULD TURN TO EASEMENTS ONLY AS A LAST RESORT. I DO NOT RULE OUT THAT THERE MAY BE PLACES IN NEW HAMPSHIRE AND NEW ENGLAND WHERE TO SAVE FORESTS FROM DEVELOPMENT WE MAY HAVE TO TURN TO SUCH A METHOD OF LAST RESORT. WHEN BETTER ALTERNATIVES DO NOT EXIST, I WOULD BE WILLING TO SUPPORT CONSERVATION TYPE EASEMENTS. NASH STREAM, HOWEVER, IN MY JUDGEMENT, IS NOT AN EXAMPLE OF SUCH A SITUATION. THERE NO LONGER IS A DEVELOPMENT THREAT AND THE STATE IS COMMITTED TO PROTECT THE CONSERVATION VALUES OF NASH STREAM AS IT IS ON ALL ITS LANDS. IT IS CLEARLY REDUNDANT FOR THE NATIONAL GOVERNMENT TO STEP IN NOW AND PAY THE STATE TO DO SOMETHING IT ALREADY IS STRONGLY COMMITTED TO DO. FURTHERMORE, AS A MATTER OF GENERAL POLICY, THE CONGRESS HAS RESISTED ANY ACQUISITION OF STATE OR LOCAL GOVERNMENT LANDS EXCEPT BY DONATION OR EXCHANGE. THIS EASEMENT PROPOSAL IS SIMPLY A GRANT TO THE STATE OF NEW HAMPSHIRE DISGUISED AS SOMETHING ELSE.

I WOULD LIKE TO OFFER A MORE REASONABLE PROPOSAL, ONE THAT WOULD ENSURE THAT THE AMERICAN TAXPAYER GETS A FAIR RETURN FOR

THE DOLLAR. I RECOMMEND THAT THE FOREST SERVICE AND THE STATE SIMPLY SPLIT THE FEE SIMPLE OWNERSHIP OF THE NASH STREAM TRACT AND COORDINATE LAND MANAGEMENT WITH A JOINT MANAGEMENT PLAN. THERE ARE NUMEROUS SUCCESSFUL EXAMPLES OF SUCH PLANS GUIDING THE MANAGEMENT OF NATIONAL FORESTS AND ADJACENT LANDS. THE LAKE TAHOE BASIN, FOR EXAMPLE, INCLUDES BOTH NATIONAL FOREST AND STATE PARK LANDS. JOINT AGREEMENTS BETWEEN THE FOREST SERVICE AND THE STATES OF CALIFORNIA AND NEVADA HAVE ENHANCED THE PROTECTION AND MANAGEMENT OF THE AREA. MY PROPOSAL WOULD BE A FAIR COMPROMISE. EVEN AFTER THE FOREST SERVICE PURCHASED AS MUCH OF THE TRACT AS POSSIBLE WITH ITS REMAINING $4 MILLION APPROPRIATION, THE STATE WOULD STILL OWN A SIZABLE PORTION OF THE TRACT. BOTH NEW HAMPSHIRE AND THE FOREST SERVICE WOULD END UP OWNING AS MUCH OF THE LAND AS THEY CAN AFFORD AT THIS TIME, THE COMPLICATIONS ASSOCIATED WITH EASEMENTS WOULD BE AVOIDED AND THE LAND WOULD RECEIVE QUALITY MANAGEMENT AND MAXIMUM PROTECTION.

I REMAIN CONVINCED THAT NATIONAL FOREST DESIGNATION WOULD PROVIDE THE BEST POSSIBLE MANAGEMENT FOR THE NASH STREAM DRAINAGE. IT IS IMMEDIATELY ADJACENT TO THE WHITE MOUNTAIN NATIONAL FOREST AND, THEREFORE, IS A LOGICAL ADDITION TO IT. BECAUSE THE FOREST SERVICE ALREADY HAS A PRESENCE IN THE AREA, IT IS FAR MORE EFFICIENT TO USE ITS EXISTING PERSONNEL, ORGANIZATION AND EXPERTISE TO MANAGE THE DRAINAGE THAN TO CREATE A NEW ORGANIZATIONAL STRUCTURE THAT IS UNTRIED AND INEXPERIENCED. THE MISSION OF NATIONAL FORESTS AND ALL THE LAWS GOVERNING THEIR MANAGEMENT WOULD ENSURE THAT NASH STREAM WOULD RECEIVE THE KIND

OF MULTIPLE USE MANAGEMENT THAT THE PUBLIC HAS INDICATED IT WANTS FOR THE AREA. AS A RESULT, THERE IS WIDESPREAD PUBLIC SUPPORT IN NEW HAMPSHIRE TO EXPAND THE WHITE MOUNTAIN NATIONAL FOREST. FURTHERMORE, THE LAWS REQUIRING FULL PUBLIC INVOLVEMENT IN NATIONAL FOREST DECISION MAKING WOULD GUARANTEE THAT NEW HAMPSHIRE CITIZENS WOULD CONTINUE TO HAVE A VOICE IN NASH STREAM'S MANAGEMENT.

THANK YOU FOR GIVING ME THE OPPORTUNITY TO TESTIFY ON THIS IMPORTANT ISSUE.

STATEMENT OF
GORDON H. SMALL, DIRECTOR OF LANDS
FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Forests, Family Farms and Energy
Committee on Agriculture
United States House of Representatives

Concerning oversight of a land acquisition case involving
a conservation easement in the State of New Hampshire

JUNE 1, 1989

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to appear before this subcommittee to offer the Department of Agriculture's views on Submission No. SC-9/05/89, a conservation easement purchase involving the Nash Stream tract in New Hampshire. This acquisition was authorized pursuant to the New Hampshire Forest Management Initiatives Act of 1988 (Public Law 100-466). I will refer to this law in this testimony as "the Act."

The Act authorizes and directs the Secretary of Agriculture to acquire 46,000 acres of land and interests in New Hampshire owned by the Diamond International Corporation. The Act encourages a cooperative acquisition effort between the Secretary, the State of New Hampshire, and conservation organizations. The total acquisition costs are $12.7 million, of which Congress appropriated $5.25 million for the federal share or about 2/5th of the total.

There are over 17 separate tracts involved in the transaction ranging from a few scattered acres to the main Nash Stream tract of 39,500 acres. To meet the mandate of the Act, the State and the Forest Service have dealt with these parcels in various ways. Last October, the State of New Hampshire bought Nash Stream and several thousand acres of scattered tracts in Northern New Hampshire

for $12.7 million. That initial purchase was financed at a cost of $7.6 million from the State's Land Conservation Investment Program and by a $5.1 million loan from The Nature Conservancy and the Society for the Protection of New Hampshire Forests. Simultaneously, the Forest Service acquired from the State of New Hampshire approximately 4,500 acres in fee title within and adjacent to the existing boundaries of the White Mountain National Forest for $1,175,000. We are currently negotiating with the State to acquire a Federal interest in the Nash Stream tract for about $3.95 million.

This hearing concerns the method we have chosen to meet the requirements of the Act, namely the purchase of a conservation easement over the Nash Stream tract. We have provide the Committee with the terms of the easement. Basically, the State would retain rights to the timber and to non-developed recreation. The United States would acquire the commercial development and subdivision rights and unreserved subsurface rights. The rights to be acquired by the United States have been appraised in excess of $3.95 million, and we are awaiting title clearance to close on the transaction.

One issue centers on the question of whether the Federal Government should acquire easement rights in land owned in fee by a State. Easements are one of many tools to achieve land conservation objectives and their utility and effectiveness depend on the facts of the situation. In our opinion, the Nash Stream situation lends itself to use of easements as an effective mechanism to achieve the purposes of the Act. In considering this matter, we look to the Act for guidance. We believe the easement proposal is cost effective, legally enforceable, and faithful to the spirit and intent of the Congress.

As to Nash Stream being retained in State ownership and management, the Act encourages the Forest Service to "cooperate and assist ongoing and future initiatives by the State and private organizations" (Sec. 2(a)). By the date of the Conference report, the State already had an option on the Nash Stream tract and intended to incorporate that land into the State forest system. Accordingly, we determined that an easement was the best way to assure the ownership and management of this land as envisioned by the House-Senate Conferees.

It has been suggested that Nash Stream should be partitioned and incorporated into the White Mountain National Forest. Again, we look to the Act and its legislative history. The Conference did not adopt the original Senate language which would have expanded the boundaries of the White Mountain National Forest to include the property.

Some would prefer that the United States purchase a greater interest in Nash Stream, including fee title. However, this was not possible with the amount of the appropriation. The Act requires that "Acquisitions ... shall be commensurate with appropriated and donated funds...". Congress appropriated only 40% of the total amount needed to acquire all the optioned lands. In our view, the easement is "commensurate" with available funds, and is the most cost effective way of assuring that the intent of the Act is met over the most land.

Some comments have addressed the management guidelines included in the easement, particularly the timber management direction. We believe this direction is consistent with the language of the Act. The first sentence of the Act states that it is "For the protection and management of the timber resources and the scenic, natural, and recreation values..." (Sec. 1(a)).

Section 4 elaborates that "the primary management emphasis shall be the sustained yield of forest products consistent with the traditional uses..." (Sec. 4). In accord with this Congressional intent, the easement allows timbering subject to stringent environmental constraints.

Some have questioned whether the United States is getting it's money's worth spending $3.95 million on an easement. As required by law (P.L. 91-646), the United States appraised the easement. Our appraisal indicates that the lands and interests in lands acquired under the easement are valued at least at $3.95 million. From a policy perspective, we have maximized the utility of the moneys appropriated. For its contribution of 40% to the overall cost of the acquisitions, the United States ensured protection of all of the land for public use and enjoyment. Stated differently, had Congress not acted, the State might not have been able to exercise its option and the land might not be available for public use.

The United States does not generally buy easements from states (although easements have been purchased over municipally-owned land for projects such as National Scenic Trails). However, shared ownership between the Federal and state governments is not uncommon. Large areas of lands purchased by the Department of Agriculture under New Deal era submarginal land programs were transferred to states at reduced costs with the United States retaining a reversionary interest to assure public use. Many of these lands comprise major components of state forest systems throughout the east.

Conservation easements such as that used at Nash Stream are but one of many possible approaches to land conservation needs. We do not view this approach as a precedent for future acquisitions in the area. Consistent with other

provisions of Public Law 100-466, we are continuing work on the Northern Lands Study to review future public land policy options.

This concludes my testimony. I would be pleased to answer any questions you may have.

STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

JUDD GREGG, GOVERNOR

Testimony Before the
House Interior Subcommittee on Forests, Family Farms & Energy
on
The Nash Stream Acquisition in Coos County, New Hampshire

Thursday, June 1, 1989, 10:00 a.m.
Longworth House Office Building, Room 1302

By
Will Abbott, Executive Director
New Hampshire Land Conservation Investment Program
on behalf of
Governor Judd Gregg

MR. CHAIRMAN:

Mr. Chairman and Members of the Committee, on behalf of New Hampshire Governor (and former Congressman) Judd Gregg and the people of the Granite State I wish to thank you for this opportunity to discuss the initiative to protect the Nash Stream watershed in Coos County, New Hampshire.

There are three critical issues concerning the Nash Stream protection project which the State of New Hampshire requests be part of your record:

First, the 40,000 acre Nash Stream property is one of the last undeveloped watersheds of its size in New Hampshire, and, as such, warrants public protection. When Diamond International put this land on the market in February of 1988 it was the third largest tract of privately owned land in the State. The State aggressively negotiated a purchase and sales agreement to acquire the property when it became clear that the market was valuing the land at a price considerably higher than its value solely as timberland. The conservation of this 40,000 acres of woodland for the wood economy and for public recreation with public funds was --- and continues to be --- in the public interest.

The fact that the State of New Hampshire's own land protection program, The Land Conservation Investment Program (LCIP), obligated $7.65 million toward this purchase from a fund with a total of $13 million available (to protect land in all 10 New Hampshire counties) speaks to the priority the State places in protecting Nash Stream.

Second, the State proceeded with the effort to purchase a fee simple interest in the 40,000 acre Nash Stream property only after the U.S. Congress enabled the federal government to become a partner in the acquisition. With the adoption of Senator Warren Rudman's Amendment #116 to the 1989 appropriation for the Forest Service, Congress directed the Secretary of Agriculture to acquire these lands "in cooperation with the State and private entities" and gave the Secretary the discretion to determine how to best execute the federal acquisition interest.

Had this innovative partnership between the public sector --- the State and the federal governments --- and the private sector --- The Nature Conservancy and the Society for the Protection of New Hampshire Forests --- not come together when it did last year, we would not be here today discussing this easement proposal.

Third, the State of New Hampshire intends to manage this property as a working forest with public recreational access. Protection of wildlife, its habitat, and water resources will be key management goals. The proposed conservation easement to be purchased from the State by the federal government assures this intent in perpetuity. By monitoring a federally owned conservation easement on Nash Stream the Forest Service will be the State's partner in assuring these management goals.

The State agrees with the Forest Service that the easement clearly meets the Congressional intent, as described in Section 4 of Amendment 116. Specifically, the Congress stated that "the primary management emphasis shall be the sustained yield of forest products consistent with the traditional uses, including public access, and conservation of other resource values."

What is most remarkable about the Nash Stream acquisition is that these three critical issues have been addressed substantively and publicly within a very short period of time for a project of this complexity. Government traditionally does not (and some would argue should not) respond to large land offerings this rapidly. We in New Hampshire think there is a lesson here --- specifically that government needs to be ready to act rapidly in such circumstances and, further, that it can and should.

Looking back, we need to remember that Diamond International and the buyer of their New Hampshire holdings (Rancourt Associates of Nashua, New Hampshire) were legally bound to execute the transfer of title from Diamond to Rancourt by October 27, 1988. The sales agreement between the two was executed at the end of May 1988. The sales agreement between the State and Rancourt was executed August 5, 1988, and set the purchase price at $12.75 million (or $282.50 per acre) for 45,000 acres.

The State and the Federal government, with the assistance of

the Society for the Protection of New Hampshire Forests and The Nature Conservancy, had to pay the piper by the October 1988 closing if the Nash Stream property was to be purchased at the agreed price of $282.50 per acre.

The rest is now history. The closing was held October 27, 1988. A total of 45,000 acres of Diamond International's 67,088 acres in New Hampshire was purchased that day by the State of New Hampshire through an assignment agreement with Rancourt Associates. Rancourt held the remainder (22,088 acres).

The $12.75 million purchase price for the 45,000 acres was intended to come from the following sources:

1. From New Hampshire's Land Conservation Investment Program (authorized 8-25-88) $7,650,000.00

2. From the U.S.D.A./Forest Service FY 1989 Appropriations Bill Amendment #116 (enacted 9-27-88) $5,100,000.00

As intended by the authors of Amendment 116, the actual federal title interest to be obtained was to be determined as soon as practicable, but not necessarily before the October 1988 closing between Diamond International and Rancourt. In fact, the U.S. Forest Service did come to the October closing with $1.175 million to purchase 14 separate inholdings within the existing boundaries of the White Mountain National Forest. These 4400 acres had an appraised value of $1.175 million.

The actual source of the $12.75 million conveyed October 27, 1988 to Rancourt Associates was as follows:

1. State of New Hampshire $7,650,000.00

2. U.S. Forest Service $1,175,000.00

3. Mortgage from The Nature Conservancy and the Society for the Protection of NH Forests to the State of NH $3,925,000.00

TOTAL $12,750,000.00

In point of fact, Mr. Chairman, the State of New Hampshire is still paying interest on that $3,925,000.00 mortgage, a sum that will likely total $400,000.00 by the nine month anniversary of the note (July 27, 1989). We obviously have a very considerable practical interest in the prompt execution of the proposed Nash Stream Easement with the federal government, in

addition to the larger purpose of finalizing this protection project.

That summarizes the history of the fee simple acquisition by the State of New Hampshire from Diamond and Rancourt. The next issue that had to be addressed was how to convey a deeded interest in land equal in value to what the Congress had appropriated to be a partner in the September 1988 appropriations bill.

The State of New Hampshire, through then Governor John H. Sununu, approached Secretary of Agriculture Richard Lyng with the concept of the federal government purchasing a conservation easement on the entire 40,000 acre Nash Stream property. The State had an interest in seeing the land owned and managed as one unit. The federal government had an interest in securing its $3.95 million investment. If a conservation easement had a value at or above the $3.95 million that Congress had appropriated, then the land could be protected as one unit, managed as one unit, with decisions regarding the management shared between federal and state land managers.

Secretary Lyng and Governor Sununu agreed on October 5, 1988 to proceed with a legal drafting of an easement. Upon completion of an agreement acceptable to the Governor and to the Secretary, the Secretary would ask the U.S. Forest Service to appraise the easement. The two parties agreed in principle on the easement document on March 16, 1989. The appraisal was completed April 17, 1989 and valued the easement at $4.2 million.

Section 2 of Amendment #116 states that "The Secretary shall cooperate and assist ongoing and future initiatives by State and private organizations . . . to acquire the Diamond lands." Further, in April of 1988 the U.S. Forest Service published a brochure called "America's Great Outdoors: National Recreation Strategy for the National Forests." On Page 3, Forest Service Chief F. Dale Robertson cites the Forest Service's "enthusiasm and commitment . . . to try new ideas and new approaches in meeting the growing outdoor recreational needs of the American people."

On Page 11 of the same document there is a reference to "Forging Partnerships." A goal of the Forest Service is stated to be "(To) seek partnerships with other recreation providers --- Federal, State, local and private sector --- to define complementary roles that best serve the customer."

Mr. Chairman, the State of New Hampshire respectfully submits that by executing the Nash Stream Easement the federal government is making good on a commitment made by the U.S. Forest Service to seek creative partnerships in protecting land for the

public. Without this particular partnership this particular land would have been lost, as no one partner had the wherewithal to do the job alone. The State commends the Forest Service for its responsiveness and cooperation in bringing this partnership to the table. The Forest Service was a tough, but fair negotiator in designing the easement document.

And, further, Mr. Chairman, Governor Gregg respectfully submits that by executing the Nash Stream Easement the federal government is living up to its commitment as established in Amendment 116 to see the Nash Stream watershed protected for the public good.

Governor Gregg also wishes to be recorded as saying that the federal government is getting a good deal in the Yankee sense of the word. The State is conveying an interest in land worth $4.2 million for $3.95 million (a $250,000.00 bargain sale for the federal government). The State of New Hampshire will carry the debt service on that $3.95 million for nine months (an expense to the State of approximately $400,000.00). And, a gem of a piece of land will be protected permanently.

STATEMENT OF

Stephen D. Blackmer, Vice President for Policy
Society for the Protection of New Hampshire Forests
Concord, New Hampshire

on the Nash Stream watershed and the
future of the forest lands of northern New England

before the
House Agriculture Subcommittee on
Forests, Family Farms, and Energy

June 1, 1989

Mr. Chairman and members of the committee, I am Stephen Blackmer, vice president for policy with the Society for the Protection of New Hampshire Forests. Thank you for this opportunity to present this testimony regarding our efforts to protect the Nash Stream watershed in New Hampshire and to develop a strategy to protect the threatened forest lands of northern New England.

The Society for the Protection of New Hampshire Forests was founded in 1901 as a non-profit membership organization devoted to the wise use of the state's renewable natural resources. We remain New Hampshire's oldest and largest conservation organization with a membership of nearly 10,000.

Excessive logging, erosion, and forest fires in the White Mountains of New Hampshire brought together the first Forest Society members in 1901 with a vision of a federal forest reserve. Spurred by the Society's resolve, Congress passed the landmark Weeks Act in 1911, paving the way for the eastern national forest system. The 765,000 acre White Mountain National Forest, established in 1912, still is a prize of that system.

The Weeks Act, like Congressman John Weeks himself, was born in the White Mountains of New Hampshire. The Forest Society always has had a special concern for the White Mountains and we continue to enjoy an excellent working relationship with the Forest Service. Our experience in public-private conservation efforts in cooperation with the State of New Hampshire, local communities, and the Forest Service is unsurpassed.

Early in 1988, the Diamond International Corporation, a major forest landowner and forest products company, announced that it was putting up for sale its entire ownership of 67,000 acres in New Hampshire -- approximately 1 percent of the state. Diamond also announced the sale of 23,000 acres in Vermont, 96,000 acres in New York, and 800,000 acres in Maine.

Diamond was asking $212 per acre for its 67,000 acres in New Hampshire -- more than other forest products companies were willing to pay. The land appeared headed for development. Fortunately, the climate in New Hampshire was right for a major land protection effort. Under the leadership of our Society, awareness of the need for land protection had grown rapidly and in 1987 the state had appropriated $20 million for land acquisition. In partnership with The Nature Conservancy, we were able to pinpoint approximately 45,000 acres in New Hampshire that were especially worthy of protection.

The 45,000 acres consisted of about 20 parcels of land. Sixteen of the parcels were inholdings within the White Mountain National Forest, totalling about 4000 acres. Our strategy was to preacquire these as additions to the national forest. Four other parcels, about 2000 acres, were targeted for their special scenic qualities or critical habitat; we intended to apply to the state land acquisition program to protect these lands. But the jewel of the project was a 40,000 acre tract -- the Nash Stream watershed.

In May, 1988, Senator Rudman and the other members of the New Hampshire delegation requested an appropriation of $9 million to purchase as much as possible of the inholdings and the Nash Stream as an addition to the White Mountain National Forest. Ultimately, despite Senator Rudman's best efforts, only $5.25 million was appropriated; our Society and The Nature Conservancy scrambled to raise the difference.

We had no time to waste; on May 27, 1988, -- almost exactly one year ago -- our fears came true as Rancourt Associates, a New Hampshire-based group of developers -- purchased the land. Under intense public pressure, Rancourt gave us three months to put together a proposal. Fortunately, we were able to call on the state's land acquisition program for $7.65 million toward the negotiated sale price of $12.75 million. With The Nature Conservancy, we have provided a bridge loan of $5.1 million until the federal funds are released. Based upon these federal and state commitments, the state purchased the 45,000 acres in October, 1988.

The principal remaining problem was to allocate interests in the Nash Stream land between the state and federal governments. The state offered to sell a proportionate share in fee, at the price per acre it had paid to acquire the land from Rancourt; the Forest Service refused because the state's purchase price was higher than the Forest Service's appraised value. The state offered to sell a proportionate common and undivided interest; the U.S. Department of Justice could not agree. Finally, in

October, 1988, the state and Forest Service agreed to share the costs of the acquisition through a sale by the state of the development rights. Thus, the easement is a straightforward and commonly understood legal mechanism for the two entities, by pooling their resources, to do together did what neither could have done alone -- protect the entire 40,000 acre watershed.

This solution provides a legally sound means of dividing the interest in the land, avoids dividing the management responsibility, ensures that the management of the land is acceptable to both parties, and provides an opportunity to learn to use conservation easements and other creative land protection techniques more effectively on forest lands throughout northern New England.

The agreement between the state and the federal government is a good one, guaranteeing permanent public use of the Nash Stream for natural resource conservation and management purposes. Yet, much work remains on the details of how the land will be managed. We, and I am sure the Forest Service, will be working with the state to develop a management plan for the Nash Stream in accordance with the intent of Congress in the New Hampshire Forest Management Initiatives Act of 1988. We anticipate that the management of the Nash Stream will be indistinguishable from that of the White Mountain National Forest.

We are strongly encouraging the state to develop a formal mechanism for public input to the management planning process. We also will advocate that, when the Forest Service reports to Congress in 1990 concerning the final disposition of the Nash Stream, the Forest Service and state recommend extending the boundary of the White Mountain National Forest to include the entire Nash Stream tract.

In addition, we are pursuing, in partnership with The Nature Conservancy, acquisition of the 7000 acre Stratford Bog tract adjacent to the Nash Stream. We hope that this may become a fee simple addition to the White Mountain National Forest. In addition, other parcels totalling over 30,000 acres adjacent to Nash Stream may come up for sale within the next several years and require public protection.

The Nash Stream land is of particular importance not only because of its outstanding natural resource values but because its sale may mark a trend of large forest landowners in northern New England divesting their developable lands. This concern led us in 1988 to ask Senator Rudman to work with Senator Leahy to authorize the Northern Forest Lands Study to develop strategies to conserve the roughly 15 million acres of large forest ownerships in northern New England. We appreciate the committee's interest in this study.

These lands offer us an extraordinary challenge, and an unsurpassed opportunity to expand our conservation horizons. Not since the passage of the Weeks Act has the need for large scale land protection, or the chances of success, been greater. It is clear, however, that in order to protect these millions of acres for the public benefit, we will need new partnerships and innovative solutions to complex conservation problems.

Some increased public ownership will be appropriate, and necessary, to protect existing recreational and timber uses of the land and to protect natural areas in the face of intensive development pressure. Early public acquisitions should center around the critical lands that are most likely to be lost to development. These include lake and river shorelines and areas such as the Nash Stream valley that become threatened because of changing ownership and relative proximity to highways and existing developed areas.

There is no way, however, that we will be able to purchase outright all the land that will need to be protected. Less-than-fee acquisition also will be a valuable tool. Purchase of development rights, for example, can enable protection of key resources at relatively modest cost. Incentives other than purchase also will be necessary to keep forest land in forestry and out of development. Tax incentives, for example, may reduce the differential between what land can produce through forestry and through development. In exchange, the public would seek protection of the land from development.

Only with a strategy combining all of these tools, and others, will we be able to meet the challenge of protecting these million of acres - the last large area of undeveloped forest in the northeast. A stategy comparable in boldness and creativity to the Weeks Act will be needed. We in New Hampshire are proud of our history in creative land protection and we look forward to working with the committee, the Forest Service, and the states to develop a new strategy that will work to protect these critical lands. Thank you.

The Nature Conservancy

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STATEMENT OF EDWARD L. SPENCER
DIRECTOR, THE NATURE CONSERVANCY, NH FIELD OFFICE
BEFORE THE HOUSE AGRICULTURE SUBCOMMITTEE
ON FORESTS, FAMILY FARMS AND ENERGY

JUNE 1, 1989

Mr. Chairman, members of the subcommittee, my name is Edward L. Spencer, and I am the State Director of The Nature Conservancy's New Hampshire Field Office. I appreciate the opportunity to appear before the subcommittee to provide background information on the negotiations for, and the interim financing of, the Nash Stream acquisition in New Hampshire.

The Nature Conservancy is a national, non-profit land conservation organization with over 500,000 members. Our principal and sole objective is to identify the best and most important examples of America's ecosystem types and rare species habitats - this country's biological diversity - and to provide protection for the most threatened of those areas and species.

The Nature Conservancy has been actively involved in the effort to protect Nash Stream because of its ecological importance. By its size, location, condition and character this area is an outstanding national resource. Rarely is it possible to protect an entire watershed of this size. Surrounded by peaks rising 2500 feet above the valley floor it is also a striking landscape to all who visit it. Particularly important to The Nature Conservancy is the biological resource. Based on field research that The Nature Conservancy has completed on the site, twenty-one occurrences of rare species and natural communities have been identified on these lands. The tract also provides potential habitat to several rare animals in New Hampshire requiring extended tracts of wild lands, including Canada Lynx, Pine Martin, Bald Eagle and Golden Eagle.

The Nature Conservancy's role in this project has been three-fold. First, the Conservancy identified the area as having outstanding natural characteristics. Second, the Conservancy initiated negotiations, in concert with the Society for the Protection of New Hampshire Forests, to protect, through acquisition, the most significant portions of Diamond International's lands in New Hampshire, including Nash Stream. (The Conservancy has also helped protect major tracts of Diamond's lands in Maine, Vermont and New York.) Third, The

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Nature Conservancy provided a bridge loan to enable the state and federal governments to close the acquisition at the appointed time.

The Nature Conservancy learned of the potential opportunity to protect a significant portion of the Diamond International lands in northern New England in the autumn of 1987 when Diamond International provided the Conservancy with access to their national land records. Based on this information the Conservancy made an offer to purchase all of Diamond's lands in New Hampshire through a long term option. This offer was not accepted, however, and the property was listed with a real estate broker and sold, despite the efforts of conservationists and others, to Rancourt Associates.

Immediately, (the next business day) following the purchase of the Diamond lands in New Hampshire and Vermont by Rancourt Associates, The Nature Conservancy and the Society for the Protection of New Hampshire Forests opened negotiations with Rancourt. Our goal was to provide protection for as much of the most significant lands as possible within the limits of likely funding resources. We had to make the best judgments that we could within these limits of time, funding and information.

It was understood that both state and federal resources would be needed to accomplish this protection project. It was also understood that the conservation organizations had a role in facilitating the negotiations and providing interim financing.

The earnest efforts of Senator Rudman and the New Hampshire delegation encouraged us to believe that federal funds would be available to help protect a portion of these lands. Even with the federal funds it was unlikely that, on their own, they would be sufficient to protect all the lands we hoped to protect. Consequently, some lands were removed from the negotiations. The State of New Hampshire then committed itself to helping to fund the protection and this brought them into the negotiations.

The specific terms of the final agreement, were negotiated between the State of New Hampshire, in consultation with the federal government, and Rancourt Associates. At the time of that agreement, as far as we know, there was no determination of the respective ownership interests between state and federal governments, except that the federal government would acquire those lands, or interests in lands, located within the purchase boundary of the White Mountain National Forest.

It is important to remember that, during these negotiations,

The Nature Conservancy's only concern was to identify sufficient funds from a variety of sources to complete the needed acquisition from the developer. A year ago it seemed highly unlikely that this would succeed. Only through the committed and sustained cooperative efforts of all concerned was this, in fact accomplished.

Despite our best efforts, at the closing with Rancourt Associates in October, federal funds were not available to complete the federal portion of the purchase. Consequently, The Nature Conservancy was requested to provide a loan of $3.95 million to the project on behalf of the Forest Service, pursuant to a Letter of Intent, dated October 26, 1988, to cover the funds appropriated by Congress but not released at that time. To facilitate this transaction the State took title to the property and gave a mortgage for the Nash Stream tract to The Nature Conservancy and the Society for the Protection of New Hampshire Forests, as security for the loan. At that time it was anticipated that the federal funds would be released in a matter of a few weeks.

The Nature Conservancy has not been involved in the negotiations between the state and federal governments regarding the division of interests for Nash Stream.

It is clear that Nash Stream would have been very much at risk from a variety of development and subdivision proposals had Rancourt Associates retained the land. The Conservancy, along with the Society for the Protection of New Hampshire Forests negotiated with Diamond International and Rancourt Associates on behalf of what we understood to be the public interest, anticipating that federal and state funds would promptly become available. The Conservancy has committed almost four million dollars of its revolving funds to this project.

We respectfully request that Congress release the funds appropriated for Nash Stream as quickly as possible so that the Conservancy's funds can be repaid. This will enable the Conservancy to commit these funds to additional protection projects in New England and around the country.

Thank you. This concludes my statement.

THE WILDERNESS SOCIETY

STATEMENT OF MICHAEL J. KELLETT, THE WILDERNESS SOCIETY, ON LAND ACQUISITION IN NEW HAMPSHIRE, BEFORE THE U.S. HOUSE AGRICULTURE SUBCOMMITTEE ON FORESTS, FAMILY FARMS, AND ENERGY JUNE 1, 1989

Mr. Chairman and members of the Subcommittee, I am Michael Kellett, Northeast Regional Director for The Wilderness Society. The Wilderness Society is a 54-year-old nonprofit conservation organization dedicated to the preservation of wilderness and wildlands, wise use of our nation's public lands, and protection of natural landscapes and ecosystems. Our current membership exceeds 280,000.

I am here today to testify on issues surrounding the federal government's involvement in the purchase of 45,000 acres of undeveloped industrial timberlands in northern New Hampshire, formerly owned by Diamond International and subsequently by Rancourt Associates. The Congress last fall appropriated $5.25 million to help protect these lands from subdivision and development, restricted public access, and resource degradation. This was an important and encouraging action. Unfortunately, the Department of Agriculture's plans for disposition of some of these funds have raised serious concerns as well.

In 1988 Senators Rudman and Humphrey and Congressman Gregg sought a FY1989 appropriation of $9.3 million from the Land and Water Conservation Fund to purchase, in fee, all 45,000 acres for addition to the White Mountain National Forest. Congress eventually appropriated $5.25 million, allowing for the use of fee purchase or other protection methods. In the meantime, the State of New Hampshire agreed with the landowner to pay $12.75 million to purchase all 45,000 acres, with the help of a bridge loan from the Society for the Protection of New Hampshire Forests and The Nature Conservancy.

Of the funds appropriated by Congress, about $1.3 million went toward the purchase of almost 4,800 acres of White Mountain National Forest inholdings. Over 40,000 acres of critical lands outside the national forest proclamation boundary (those in the Nash Stream drainage) were still in need of protection, but only $3.95 million in federal funds remained. This made it

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necessary for the state and federal governments to work out a mutually acceptable method for financing and administering these lands. The concerns of some Members of Congress, The Wilderness Society, and others center on this aspect of the transaction. I would like to provide The Wilderness Society's perspective.

The Wilderness Society has followed this issue since the sale of the Diamond lands in New Hampshire (as well as Maine, New York, and Vermont) was announced two years ago. At a public meeting called by the New Hampshire congressional delegation on March 10, 1988, and many times subsequent to that, The Society stated its strong support for taking steps to protect the traditional values and uses of key portions of these lands. We applauded the efforts of the New Hampshire delegation to obtain a federal appropriation to add the lands to the White Mountain National Forest, and urged Congress to appropriate the funds necessary for this purpose.

When in late summer it became obvious that only part of the requested federal funds were likely to be appropriated, we assumed the federal government would proceed to purchase as much land as it could afford in fee, with the State of New Hampshire retaining ownership of the rest. Thus, we were surprised when we heard that Governor Sununu and the Secretary of Agriculture Lyng had agreed on a deal whereby a federal conservation easement would be purchased on the Nash Stream tract, with the state retaining fee ownership of the land. We made it known at the time that we were not necessarily against the use of an easement, but we expressed skepticism as to how this approach could adequately protect the land and give federal taxpayers a proper return for their dollars.

Upon receipt of the document, which was only a few weeks ago, we provided our comments to Congressman Yates as requested by his staff. I will not repeat those comments today, since they are fairly specific, but I will try to provide an overview of our broader concerns. These fall under two major categories: (1) the return provided to the American taxpayers for their investment; and (2) the public policy implications of the Nash Stream case.

Returns to the Federal Taxpayer

The Nash Stream tract is a land of outstanding natural values, comparable--in terms of its scenic beauty, plant and animal life, quality of lakes and streams, recreational opportunities, timber resources, and remote, undeveloped character--to lands now within the White Mountain National Forest. Moreover, these lands are adjacent to and directly north of the boundary of the national

forest, an existing management entity with a long tradition of forest land management in New Hampshire. For these reasons The Wilderness Society believes that the most appropriate disposition of the Nash Stream would be addition to the White Mountain National Forest. We are not alone in this belief, since the New Hampshire congressional delegation, state conservationists, and other organizations and individuals worked hard during 1988 toward this goal.

These efforts were not entirely successful, however; the funds appropriated were not sufficient to make possible immediate federal purchase of the entire tract. Since the appropriation was not for an outright grant to the state, this left two major alternatives: proportionate full-fee purchase of the tract (the split, based on respective contributions would be roughly one-third federal and two-thirds state ownership) or some form of joint ownership (the proposed conservation easement being one form of this). The question then became one of balancing the level of land protection provided with the return for the taxpayer dollar.

In the case of the Nash Stream tract, the proposed federal conservation easement, like full-fee federal ownership as national forest land, would be capable of preventing subdivision and development of the land and ensuring continued public recreational access and use. However, it appears that the federal purchase of a conservation easement on 40,000 acres of state land at a cost of $3.95 million is redundant and unnecessary since the State of New Hampshire purchased the tract to prevent subdivision, development, and restrictions on public access and use--benefits the state would provide anyway at no charge. Buying a conservation easement on private land, on the other hand, would prevent land uses that one could reasonably expect might occur without an easement, and thus would provide a tangible return for the investment. For these reasons, we believe that development rights on land already protected under state ownership should cost significantly less than they would on privately owned land. Thus, the value of the easement appears to have been assessed at far too high a level.

It also seems reasonable for taxpayers who are being asked to help buy a tract of land to expect a fair share of the revenue received from the lands. If a proportion of the Nash Stream lands were added to the White Mountain National Forest, revenue from timber sales would flow to the federal treasury, as it does from other national forest lands. Under the easement approach, we could not expect provision for timber revenue, since the sole holder of the timber resource would be the state.

Adding about 13,000 acres of the tract to the White Mountain National Forest would provide permanent federal control of all landowner rights on those lands while the State of New Hampshire would retain all the rights on the remainder. The federal one-third of the tract would receive protection under applicable federal laws and regulations while on the other two-thirds management by the State of New Hampshire would be no different than it would be with the easement. The federal and state governments could enter into a separate cooperative agreement to ensure coordination of the management of each portion.

The question has been raised as to whether The Wilderness Society opposes the use of a conservation easement on Nash Stream because we are really against the use of easements in general. This is not the case. Neither are we arguing that the proposed easement itself is poorly written. Rather, we simply feel for the reasons above that in this particular case a conservation easement cannot provide the American taxpayer the same return on investment as would full-fee acquisition.

Public Policy Implications

The Nash Stream case also has significant public policy implications, in terms of the role of public versus private land, the determination of how public funds should be spent, and the process by which land protection decisions are made. If the proposed easement had been on private land the argument for choosing the easement approach over fee acquisition would be much more compelling. The Nash Stream tract does not involve a public easement on private land, however, but the interaction of two public sector entities. The Wilderness Society feels strongly that the public can and should hold public land management to higher standards than private land. (This is not to say that private land is never managed as well or better than public land, but that the public cannot expect this to be the case.) Yet by treating state land essentially the same as it would private land, the proposed Nash Stream easement agreement blurs this distinction.

For example, although private land management is almost entirely a private affair, citizens should expect to fully participate in public land management decisions. As we have seen with national forest planning, public input can be a difficult, expensive, ungainly, and contentious affair. Yet this is the best "reality check" federal land managers have to ensure that they are caring for public land consistent with the desires of the people who own it. Under the proposed Nash Stream easement the public (with the possible exception of residents of New Hampshire) would be

forever locked out of the management process. This is one of the most serious flaws in the agreement.

Another important concern is how the federal interest should be determined in state/federal or private/federal joint land protection ventures. We believe that in the future, partnerships between various public and private entities will constitute an important component of land protection efforts in New England. The State of New Hampshire took the initiative by providing the bulk of the Nash Stream purchase price and private groups provided a vital bridge until federal funds were made available, but the $3.95 million in funds appropriated by Congress are the "glue" that holds the Nash Stream initiative together. None of the parties could have consummated the deal alone.

In such a situation it is extremely important to ensure that such partnerships are fair to all parties involved. How does one judge fairness? The public's return for its investment is one reasonably objective measure. Another is whether or not the agreement responds to the intent of the Congress, the body that appropriates federal funds.

When Congress appropriated $5.25 million to purchase Diamond International lands in New Hampshire, it stated that "the Secretary of Agriculture. . . is authorized and directed to acquire by purchase, donation, or otherwise, lands and interests therein. . . ." This allowed for the full range of options from full-fee federal purchase of as much as possible to cooperative ownership to the acquisition of partial ownership. Yet a joint letter to the Secretary of Agriculture, dated November 22, 1988 and signed by Congressmen Bruce Vento, Chairmen of the Subcommittee on National Parks and Public Lands and yourself, Mr. Chairman, termed the proposed easement agreement "unprecedented, redundant and wasteful." According to the letter, the State of New Hampshire would receive "dollars from the national taxpayer without giving that taxpayer anything of substance or value in return. . . . It is simply a grant to the State in disguise." Congressman Sidney Yates, Chairman of the Subcommittee on Interior and Related Agencies, in a letter to the Secretary dated December 9, 1988, stated that "there is a concern that the . . . Nash Stream tract will not be made part of the White Mountain National Forest as envisioned when the appropriation was enacted."

Only Congress can determine whether in the case of Nash Stream the Secretary of Agriculture has reflected its intent. Yet these letters certainly seem to indicate concern that it is possible that the appropriated funds are not being spent as intended. It seems to us that important considerations such as those noted above should be thoroughly and openly discussed before an

agreement like that for Nash Stream is reached. Such discussions should involve key Members of both the House and Senate. Other interests, including The Wilderness Society, should have an opportunity to comment early in the process. Certainly, any future land protection initiatives must take these issues into account from the beginning.

Conclusion

Mr. Chairman, I have outlined above the concerns of The Wilderness Society regarding the Nash Stream agreement. We believe that a protection approach involving full-fee federal acquisition and addition to the White Mountain National Forest would have been a much better course of action than the agreement reached between the State of New Hampshire and the Secretary of Agriculture. We would still be very pleased to see the terms of the agreement changed accordingly. Yet the resolution of this issue has been delayed for months; we believe it is important to move forward soon, even it is ultimately with the conservation easement approach.

It will be up to the Subcommittee, not us, to consider these issues and determine its course of action. Whatever its decision, we believe the Subcommittee's fundamental considerations should be whether or not the agreement, as it stands, truly meets the best interest of the American taxpayer and whether it reflects the will of Congress. Whatever the outcome of the Nash Stream case, The Wilderness Society is pledged to do its best to make it work.

If the Congress and the Secretary of Agriculture decide to proceed with the easement approach, we recommend that several actions be taken. A memorandum of understanding should be drafted by the U.S. Forest Service and State of New Hampshire providing for state/federal cooperative management that would include a jointly developed planning and monitoring process, jointly arrived at management standards and guidelines, and full and ongoing public participation in planning and management decisions. Congress should seriously consider legislation to add the Nash Stream tract, as well as the adjacent Stratford Bog area (part of the Diamond lands that remains unprotected and should be considered for federal acquisition) to the proclamation boundary of the White Mountain National Forest to help ensure that the federal interest will be protected in the future.

We also believe there is much to be learned from the Nash Stream precedent. Both state and federal governments have paid an unnecessarily high price financially, expended significant effort, and had to deal with considerable controversy because we failed to have a land protection plan in

place before the disaster hit. Conservation organizations that provided bridge funding have waited for months to be reimbursed, and divisions have sprung up among the conservation community itself because of the failure to resolve the issue in a timely fashion. The lack of a mutually agreed upon set of protection and management goals for the Nash Stream tract has fostered confusion and misunderstanding among well-intentioned parties. Public involvement, which would have provided direction and a "reality check" for decision-makers, was largely overlooked.

Northern New England and New York face an uncertain future. The Wilderness Society is convinced that we are at the beginning of a period of serious changes in landownership and use in northern New England and New York. Nash Stream is only one of many such land protection crises we may face in the coming years. Without significant public intervention and guidance it is likely that the very way of life in the region will be lost forever. All of us who have been involved in the Nash Stream affair have much more in common than we have differences. Now is the time to begin to plan together for the future of the rest of these northern forest lands.

Although we believe that planning and protection efforts must take place on the state, regional, and federal levels, the assistance of the Congress will be crucial if any significant land protection campaign is to be mounted. The Congress has already taken an important step in this direction by funding the Northern Forest Land Study, coordinated by the U.S. Forest Service. The study promises to greatly increase our understanding of land protection problems and opportunties in the region. Continuing appropriations from the Land and Water Conservation Fund will be crucial to ensure the protection of other key lands that come on the market. It is likely that more new land protection units will need to be established or existing ones enlarged.

We believe that recent events and the threats looming on the horizon are bringing together people from many different backgrounds who are ready to work in a constructive and orderly manner to preserve the region's traditional way of life. The Wilderness Society believes the most important job ahead is to put some sort of framework into place so that when another Nash Stream happens we will be prepared. This effort is one of our highest priorities.

Thank you for the opportunity to present this testimony.

CONSERVATION EASEMENT DEED

THIS DEED made this _____ day of _____, 1989, by and between the STATE OF NEW HAMPSHIRE (hereafter "State"), the Grantor, and the UNITED STATES OF AMERICA (hereafter "United States"), the Grantee. The State and the United States are collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the "New Hampshire Forest Management Initiatives Act of 1988", Public Law 100-466, (hereafter the "Act") authorizes and directs the Secretary of Agriculture to acquire certain lands and interests in land located in the State of New Hampshire; and,

WHEREAS, the State of New Hampshire is the owner of certain lands known as the "Nash Stream Tract" which are the subject of the Act; and,

WHEREAS, under the laws of the State of New Hampshire (R.S.A. 477:45, et seq), a conservation easement constitutes an interest in land; and,

WHEREAS, the Parties mutually seek to assure through the conveyance of this conservation easement the perpetual public use and protection of the Nash Stream Tract with primary management emphasis being the sustained yield of forest products consistent with the traditional uses of the land, including public access, and the conservation of other resource values; and,

WHEREAS, the acquiring Federal agency is the Forest Service, United States Department of Agriculture.

NOW THEREFORE, for and in consideration of $3,950,000 and other good and valuable consideration, receipt of which is hereby acknowledged, the State hereby covenants with, grants and quitclaims unto the United States of America this conservation easement. The terms and conditions of this easement are covenants running with the land constituting a perpetual servitude thereon.

I. The Property.

The Nash Stream Tract, which is the subject of this easement and is hereafter refered to as the "easement area", is described in Exhibit A attached to and made a part of this instrument. The Parties acknowledge that some portions of the

Nash Stream Tract which are referenced in the Act are not subject to this easement and those portions are expressly excepted from the description of the easement area as set forth in Exhibit A.

II. The Use of the Easement Area.

A. Subdivision: The easement area shall not be subdivided or disposed of as smaller tracts.

B. Time Limitations on Rights and Privileges Conveyed to Third Parties:

No lease, contract or other right shall be granted or renewed for a term in excess of five (5) years except for public roads or utilities.

C. Allowed Uses of the Property: Allowed uses are those expressly reserved by the State for purposes of natural resource management, public recreation, and public roads and public utilities. Uses which are not expressly reserved by the State shall be prohibited by the State and deemed acquired by the United States. Reserved uses are as follows:

1. Public Recreation Reservations. The construction, operation, and maintenance of the following facilities and appurtenant structures is permitted: campsites, trails (including cross country ski trails and snowmobile trails), internal access roads, picnic areas, boat launches, trailhead parking areas, visitors' center, and ranger station.

2. Public Roads and Utilities. The installation, operation, and maintenance of public roads or public utilities may be granted by the State only with the prior written approval of the Forest Service. For the purposes of this instrument, internal roads constructed, operated and maintained by the State and which merely provide access within the property and do not provide for through travel are not considered public roads.

3. Existing recreation residences. Notwithstanding parts II-B and II-E-1 of this instrument, individual recreation residences which existed on the date of this instrument are permitted, provided that nothing in this instrument shall be construed as limiting the power of the State to limit the size, number or duration of existing permitted uses, to charge a fee for, or to terminate such uses. These existing recreation residences are listed on Appendix B to this instrument.

4. Natural Resources Management. Management for multiple uses consistent with the purposes and provisions of this instrument, including wildlife, recreation, timber management as provided in part II-D herein, and sand and gravel resources. A dam at or in the immediate vicinity of the location of the old Nash Bog Pond dam may be constructed, maintained, and operated only for fish and wildlife management and recreational purposes at no expense to the United States. Specifically excepted from this easement are those rights held by Rancourt Associates, Inc., and its successors and assigns, for the extraction of earth and granular fill material as set forth in a certain deed dated October 27, 1988 and recorded in the Coos County Registry of Deeds in Volume 737 Page 840.

D. Management and Use of Timber Resources: Timber resources shall be managed on a sustained yield basis, provided:

1. The land base for the determination of sustained yield is the easement area. Departures from sustained yield on the easement area may be made only in the event of natural catastrophe, fire, disease or insect infestation. For purposes of this conveyance, sustained yield means the achievement and maintenance in perpetuity of an approximately even amount of annual or regular periodic wood yield consistent with multiple use objectives without impairment of the productivity of the land and forest resources.

2. No logging shall occur on slopes greater than 35% or on areas above 2700 feet in elevation.

3. Clearcuts shall not exceed 30 acres in size. Larger areas may be clearcut only with the prior written approval of the Forest Service and only as needed to harvest timber damaged by natural catastrophe, fire, disease, or insect infestations. For the purposes of this conveyance, clearcut means the removal of all or virtually all merchantable timber in a single cutting. No clearcut harvest may be made adjacent to a previous clearcut regeneration harvest area until the average height of the regeneration from the previous cut is at least 15 feet. Except for departures as provided in Part II-D.1 of this easement, within any ten (10) year period, no more than 15 percent of the total easement area may be clearcut.

4. Logging on those areas near streams, ponds, or public highways is subject to the provisions of New Hampshire R.S.A. 224:44-a, except as further defined or restricted as follows:

(a) Any future amendments to R.S.A. 224:44-a shall apply to the easement area, except that amended terms shall not apply if those terms are less restrictive than as they existed as of January 1, 1989.

(b) For purposes of R.S.A. 224:44-a, Nash Stream from the breached dam downstream to the southern boundary of the easement area, and Pond Brook from Trio pond to the confluence with Nash Stream, shall both be considered "navigable rivers".

(c) There shall be a buffer area of 150 feet around Whitcomb Pond, Trio Pond, and Little Bog Pond in which there shall be no timber harvesting, except that trees and vegetation may be cut in the buffer area as necessary for the construction and use of recreation facilities as reserved in Part II-C.1 of this easement and except that, with the prior written approval of the Forest Service, timber damaged by natural catastrophe, fire, disease, or insect infestation may be harvested. The buffer area shall be measured from the ordinary high water mark of the ponds.

(d) Any prior written consents by any state official or agent allowed under the provisions of R.S.A. 224:44-a as they may affect the easement area shall require approval in writing in advance by the Forest Service.

5. At all times, logging shall be conducted in conformance with the current applicable federal and state laws and regulations pertaining to the abatement of erosion and water pollution, including the use of best management practices prescribed for given activities.

E. Prohibited Uses of the Property. Uses which are not reserved by the State are prohibited. Without limiting the scope of the rights acquired by the United States or the scope of use prohibitions, the following prohibitions on common land uses in the area are enumerated for purposes of clarity:

1. Residential uses, all forms whether temporary or permanent, including but not limited to, residential housing, condominiums, including time share condominiums, vacation homes, cabins, camps, and group housing;

2. Ski areas, ski lodges, ski lifts, resorts, outfitting establishments;

3. Landfills, dumps, storage areas for materials other than temporary storage of materials produced from the property;

4. Garages and warehouses, except as necessary for the actual administration and management of the property.

F. Access.

1. The State and its assigns shall assure the public access to and use of the easement area.

2. The State and its assigns may reasonably restrict and regulate access and use in order to provide for public safety and prudent resource utilization and protection.

3. The State may charge reasonable fees for public entry and use of the easement area. All fees shall be fair and equitable, taking into consideration the direct and indirect costs to the State, the benefits to the recipient, the public policy or interest served, the comparable recreation fees charged by the Forest Service on the White Mountain National Forest, the comparable fees charged for similar uses of State-owned land and facilities, the economic and administrative feasibility of fee collection and other pertinent factors.

III. General Provisions.

A. This easement is subject to all valid existing rights of record existing at the time of conveyance.

B. This easement shall be enforceable in law or equity by the parties. The State shall bear the costs of any enforcement action and any costs of restoration necessitated by the violation of any of the terms of this easement. The State waives any defense of laches, estoppel or prescription. The State shall not be liable for violation of the terms of the easement caused by Acts of God.

C. The easement area shall be administered and managed by the State in accordance with the terms of this easement and the State retains all responsibilities and shall bear the costs and liabilities related to the ownership, operation, upkeep and maintenance of the property, unless and until agreed to otherwise in writing by the Parties.

D. The Forest Service shall administer this easement on behalf of the United States. The United States has an affirmative right to manage any resource or land use acquired by this easement which is not reserved by the State. The Forest Supervisor, White Mountain National Forest, shall administer this easement subject to such delegations of authority as may be forthcoming from time to time by the Secretary of Agriculture, or his subordinate officials. The

Forest Service shall have the right to enter upon the easement area at any time for purposes of administration of this easement. Any Forest Service concurrences required under this easement shall be in writing and may be subject to such terms and conditions as the Forest Service may prescribe.

E. This easement shall be construed so as to effect the conservation purposes for which it was acquired by the United States. Ambiguities will be resolved in a manner which best effect the purposes of the New Hampshire Forest Management Initiatives Act of 1988.

F. The State shall hold harmless, indemnify, and defend the United States and its agents from all liabilities, including attorney's fees, arising from death or injury to any person resulting from any act, omission, condition or other matter related to or occurring on or about the property regardless of cause, or from liabilities otherwise arising from the management or administration of the property, except as regards those liabilities arising from the acts or omissions of the United States and its agents.

G. The easement area shall not be sold or conveyed to any entity without first having afforded the United States or its assigns a right to exercise a right of first refusal to acquire the land, in fee or additional partial interests. The State shall serve written notice of a proposed sale or conveyance to the Supervisor, White Mountain National Forest, and the United States Government or its assigns shall have 18 months from the date of receipt of the notice to acquire the land or interests therein. In such event, the State agrees to sell such lands or partial interests at no more than appraised fair market value as determined by an average of two appraisals performed by appraisers agreed upon by the Parties.

TO HAVE AND TO HOLD, the rights hereby granted unto the United States forever.

IN WITNESS WHEREOF, the duly authorized representative of the State of New Hampshire has hereunto set his hand and seal on the day and year first written above.

_____

Its_____

State of_____
County of_____

On this the _____ day of _____, 19___, before me, _____, the undersigned officer, personally appeared _____, known to me to be (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

_____
Notary Public/Justice of the Peace